

SPECIAL COUNCIL MEETING

AUGUST 15, 2012

The Special Meeting of the Council of the County of Kaua'i, was called to order by the Council Chair at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, August 15, 2012 at 8:35 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable KipuKai Kualii (excused at 12:50 p.m.)
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro, Council Chair

Chair Furfaro: Ricky, on behalf of the entire Council, and to Lyndon, I would like to thank both of you, the Elections Officer as well as the County Clerk, for a job well-done this weekend, for your continued efforts and excellent performance. I know for both of you... For Rick, this was your first election on the County of Kaua'i as the Clerk, I just want to say thank you, congratulations for a job well-done. Lyndon, as well as yourself and all the work that went in and all the staff that is here that has worked a very long Saturday on overtime to accomplish our goals, and I would just like to say thank you very much.

RICKY WATANABE, County Clerk: Thank you very much, Chair. We would like to recognize our Elections Division staff also, for putting in a tremendous amount of work and for everybody in the Clerk's Office.

Chair Furfaro: I would also like to ask if you could give Lyndon some time to share with us, because we now start a new elections cycle, we do want to give some critical dates out to the public, and if you could cover those as far as being able to now register for the General Election and so forth. Lyndon, can I give you the mic and you give us some critical time path here.

LYNDON YOSHIOKA, Elections Administrator: Sure. Mr. Chair, thank you very much for providing us the opportunity. Eddie is also providing each of you an election calendar, which provides some details on what is upcoming. We have highlighted on that fact sheet some of the pertinent dates that you may be all interested in. The first one being on page 305, we have a deadline to file a Complaint for Contest for Cause of Primary Election, which hopefully will not involve Kaua'i County. So we will bypass that one rather quickly. The next one is August 23. We have a deadline to submit Charter Amendment questions to the State Office of Elections for inclusion on the General Election ballot. On the bottom of the page, we have a deadline to mail overseas absentee ballots to voters who are presently overseas. On page 405, the last day for voters to register in the general election...

Chair Furfaro: Could you repeat that one more time? The last day...

Mr. Yoshioka: The last day for voters to register for the General Election is October 8, Monday, October 8. Now those forms need to be postmarked by October 8 in order for us to process them for the General Election. The next deadline, October 23, is a Tuesday. That is when we open early voting for the General Election in the annex basement next door. Hours are 8:00 a.m. to 4:00 p.m. Monday through Saturday. On October 30 is the last day to request an absentee mail ballot. Again, that is October 30, that is a Tuesday, the last day to apply for an absentee mail ballot. Early voting ends on November 3 at 4:00 p.m. The General Election is on November 6. And the deadline to file a Complaint for Contest for Cause for the General Election is November 26.

Chair Furfaro: Thank you very much. I again want to say on behalf of the Council and the County of Kaua'i how much we appreciate all of the effort you have put into this primary election, and just a job well-done to the entire staff. Thank you.

Mr. Yoshioka: Mr. Chair, if I may?

Chair Furfaro: Yes.

Mr. Yoshioka: Can we also thank, well in addition to staff, the hundreds of volunteers that we rely on to provide the services that we do. We really would not be able to do it without them. And hundreds and thousands across the State, so without them, elections would be impossible. So we really need to acknowledge them as well.

Chair Furfaro: I think that is a wonderful acknowledgment, because people do not realize without volunteers government almost cannot perform. So thank you very much for reminding us of that extra effort by those in our community that are here to promote our democratic process and their volunteerism. Thank you very much. Vice Chair Yukimura.

Ms. Yukimura: Yes, thank you, gentlemen, for your work and all of the staff and the volunteers. I just wanted to take the opportunity to ask you, the voter turnout rate was 39%. Was that what it was?

Mr. Yoshioka: 39.2%, yes, somewhere around there, yes.

Ms. Yukimura: Last night, Honorable Senator Inouye talked about 1959.

Chair Furfaro: 1959.

Ms. Yukimura: When the voter turnout was 87%, am I correct?

Chair Furfaro: 83%, very close.

Mr. Chang: 87%. I believe Statewide was 92%.

Ms. Yukimura: I remember as a child having voter turnouts above 90%, and I am dating myself, but it was possible and I just wanted it put in a word to everyone to really take the responsibility to vote. Senator Inouye, I think it was who said, if we do not take that responsibility, we could lose the right for our democracy and there are people who are dying in the Mideast for that right. So I

just hope that everyone will 1) register to vote; and 2) come out and vote. Thank you.

Chair Furfaro: Obviously that is the exact reason why I asked for this time this morning to remind that we have new dates. People can register and the door is open for registration and also to come out and vote. I am sorry, in 1959, I did not remember the exact dates because that day is probably 4-6 and I was surfing off the point. Mr. Chang.

Mr. Chang: Thank you. Actually while you were surfing, I think I was 5 years old. I think as Lyndon was mentioning that there were not only hundreds throughout this island but thousands of volunteers across the State and one of the reports were so many people give their time, but yet it is so discouraging because when people walk into the polls, you just see one or two people there and they are giving up their entire weekend really to prep and prepare. One thing I want to commend the both of you is we had a memo that you are going to go to the Elections Division Statewide Meeting in Hilo, and we respect you for sharing your *mana'o* out to that, but to see that meeting going on and to see Ricky Watanabe and Lyndon Yoshioka in the news, that shows Kaua'i gave a lot of *mana'o* traveling across to Hilo to help out with that deal. So we want to thank you folks for doing what you do behind-the-scenes. Thank you very much.

Chair Furfaro: Again, congratulations, gentlemen and thank you for going over to Hilo and being a resource for the rest of the State. Thank you.

The meeting was called back to order, and proceeded as follows:

Mr. Kualii: Mr. Chair, I am here and I would like to let you know that I am submitting a letter of possible conflict of interest as I await further clarification from the Board of Ethics, because I am an employee of the YWCA. I will not be participating in the 3 items this morning.

Chair Furfaro: Let the record reflect that Councilmember Kualii answered the roll call and submitted a letter at this point referencing a possible conflict of interest. Thank you very much.

(Mr. Kualii was noted as recused.)

APPROVAL OF AGENDA:

Mr. Rapozo moved to approve the agenda as circulated, seconded by Mr. Chang, and unanimously carried.

C 2012-335 Communication (07/20/2012) from the Prosecuting Attorney, requesting Council approval to apply, receive and expend Kaua'i VOCA Expansion Program federal funds in the amount of \$203,109.00, and approval to indemnify the State of Hawai'i, Department of the Attorney General, for salaries, fringe, and operational expenses for the Office of the Prosecuting Attorney Victim/Witness Program for the term commencing August 1, 2012: Mr. Rapozo moved to receive C 2012-335 for the record, seconded by Mr. Chang.

Chair Furfaro: I think also by now you might have seen through communications with myself and the Department of Purchasing, this particular item is a reoccurring grant with very little variances, and thus the motion to receive

based on the comments from the Procurement Officer, as well as the packet you may have from the County Attorney's Office. So this motion is a motion to receive. Councilmember Yukimura.

Ms. Yukimura: Yes, I would like to request that the rules be suspended so we can ask some questions.

Chair Furfaro: Certainly. Are those questions posed to the Prosecuting Attorney's Office?

Ms. Yukimura: Yes.

Chair Furfaro: May I have a representative please come up.

There being no objections, the rules were suspended.

JAKE DELAPLANE, FIRST DEPUTY PROSECUTING ATTORNEY: For the record, Jake Delaplane, First Deputy Prosecuting Attorney.

JAMIE CHONG, GRANT COORDINATOR: Jamie Chong, Grant Coordinator.

Chair Furfaro: Vice Chair Yukimura, you have the floor.

Ms. Yukimura: Thank you. So it is my understanding that you are asking for moneys or you will be using these grant moneys for a Victim Witness Counselor?

Ms. Chong: Yes.

Ms. Yukimura: Also one full-time and one 8-month? Or it is a match. So it is a total of \$40,000.00, is that County moneys?

Ms. Chong: Yes.

Ms. Yukimura: So the \$70,000.00 for the Victim Witness Counselor is grant moneys?

Ms. Chong: Yes.

Ms. Yukimura: And the \$40,000.00 is County money match?

Ms. Chong: Yes.

Ms. Yukimura: And the Program Support Technician is grant money?

Ms. Chong: Yes.

Ms. Yukimura: And the fringe benefits are accordingly as well, that is the fringe for the Counselor to support...is grant money and then the Victim Witness Counselor 281 is County money?

Ms. Chong: Yes.

Ms. Yukimura: And then there are moneys that \$45,000.00 that go to the YWCA, there are two \$45,000.00, is that both grant money?

Ms. Chong: Yes, all grant funds.

Ms. Yukimura: And then can you explain the SATP and the...

Ms. Chong: The SATP is the Sexual Assault Treatment Program and the FVS is the Family Violence Shelter.

Ms. Yukimura: Okay. It is my understanding that the former Victim Witness Counselor at OPA was dismissed for lack of work. Have conditions changed since then?

Mr. Delaplane: I am not sure how to respond to that at this point. I am not sure that we are, I am sorry, that discussing any personnel matters is something that is appropriate for the Council.

Ms. Yukimura: Well, you had a Counselor and then you did not, the Counselor was dismissed. So...and the position was not filled for a long time. So what accounted for that?

Mr. Delaplane: Again, we are not going to be discussing a personnel...

Ms. Yukimura: It is not a personnel matter. It is just a position matter. So that is the question. The position was not filled, in fact, it was eliminated.

Mr. Rapozo: Point of order, Mr. Chair?

Chair Furfaro: Okay.

Mr. Rapozo: Point of order.

Chair Furfaro: Point of order. Please make note of your particular point.

Mr. Rapozo: The rule is straying from the agenda. This agenda today is to approve a grant as we have learned from the County Attorney's Office, this grant does not require an approval. If the Councilmember wishes to discuss the VOCA Program, I would believe that that is a separate posting and possibly an executive session matter. This specific agenda item, number one, is not relevant, because there is no approval required. It does not provide for the discussion on the program. It talks about a grant application and an approval request, which we have now learned is not required. So I would ask that this item, should the Councilmember want to discuss the program, be posted in a separate item, so we can have the proper posting to discuss the program itself.

Chair Furfaro: Okay. I would think that as we encroach on issues dealing with personnel matters, I believe we are not to stray in that direction. But I think the question posed about the workload and the vacancy that you are filling is appropriate. So I want to make sure that you understand me. You may focus on the

question posed dealing with the workload and the current vacancy. You may not encroach on responses dealing with personnel matters that is outside of the realm of this discussion. So the question posed to you is still unanswered is workload.

Mr. Delaplane: Okay. I guess the way I heard it, it tended to be a personnel question to me. So if I could ask the Councilmember to repeat her question.

Ms. Yukimura: This position was eliminated last year. I would like to know the reason it was eliminated, and why it is now being proposed again?

Mr. Delaplane: This position was not eliminated last year. This is a position that was in place last year and the year before that, and the year before that. We have a, this is not a vacancy. We are not filling a vacancy with this money in this grant. And so I do not know that the question is relevant to what is before the Council today as far as there being a vacancy or that this position was eliminated. Because again, the position that is referenced in the VOCA grant this year has been a position that has been in place and currently has an employee in that position.

Ms. Yukimura: The position currently has an employee in it?

Mr. Delaplane: Yes.

Ms. Yukimura: And it is being funded with VOCA moneys?

Mr. Delaplane: Yes.

Ms. Yukimura: I saw a grant application amendment for last year's that showed that the funding was not allocated to the position. Instead, the moneys were increased to the YWCA.

Mr. Delaplane: I believe again we are talking about 2 separate positions. Again, one of those positions is on the agenda today by way of our VOCA application, the other one is something that is not appropriate for discussion on the Council floor as it involves a personnel matter.

Chair Furfaro: Can we just stop right there? I am going to ask the County Attorney to come up, please. Could you please introduce yourself?

AL CASTILLO, JR., COUNTY ATTORNEY: Good morning, Chair Furfaro, Councilmembers, County Attorney, Al Castillo.

Chair Furfaro: Thank you. You heard my earlier ruling on not pursuing the personnel matters, in fact we should address personnel matters within the confine of an executive session. But the question posed dealing with the grant and the grant moneys that are allocated for a particular position, can you shed any light from the County Attorney's Office on how far we can divulge information about staffing, personnel matters, which are, in fact, under the discretion of the Department Heads throughout the County?

Mr. Castillo: Yes. I am smiling because I have not ever come up here and saw a flower in your ear. Aloha today. Council Chair, first of all, what I would like to say, whether or not any person that addresses the Council thinks

what is relevant, it is basically for the Council Chair to decide what is relevant for this body to entertain. There is a process if there is any disagreement to that point. In terms of the relevancy of agenda item 335, it is not a personnel matter if it does not go into the specifics of any disciplinary matter relevant to a particular employee. What I have heard today from Councilmember Yukimura does not take it into a personnel matter. Basically, it is relevant to the agenda item at-hand and from the facts that I know them to be. So under the totality of the circumstances, what is relevant again is for you to decide. It is fair game, because this is specifically on why there is a need for this request. Thank you.

Chair Furfaro: So rather than reference what you just said, you are confirming my earlier discussion about staffing as it relates to this grant and the vacancy, but you are concurring with me the past personnel issues are not part of today's agenda?

Mr. Castillo: Yes, in terms of any reasons particular to any specific case, yes.

Chair Furfaro: Thank you very much. Hold on one second. Mr. Rapozo has a question for you.

Mr. Rapozo: Thank you. Al, this posting and request involves one position, funding for a position.

Mr. Castillo: Yes.

Mr. Rapozo: So that the discussion should be for that position?

Chair Furfaro: That is exactly what I just said.

Mr. Rapozo: That is not what I heard from him.

Chair Furfaro: Those are the parameters. That is what I said as the Administrator of this body. Keep the questions focused on that staffing vacancy.

Mr. Rapozo: Right and the position that I heard stated by Mr. Delaplane is a position that a person is already in, and I believe that as this grant request specifies with the application that, in fact, the discussion should be focused on that position and not the program in itself. I would agree that if there are questions about the program that it should be done in a separate posting. I would guess based on Sunshine Law that if as you call it "fair game," I mean any grant request that comes up to this Office from any Department, we can ask any questions. I do not know if that is fair thing because I think this grant request is specific to a position that is already filled and, again, does not require Council approval. I think the questions should be focused on that specific position.

Chair Furfaro: Mr. Attorney, you do not have to answer that. I am quite capable of making those interpretations for myself. So if anybody is confused at this point, let me make sure that I summarize it one more time. We will not participate in questions in the areas on personnel matters. We, this body, has the authority to ask questions about the performance of grants, of which we already approved. This matter here is only to receive. But we reserve the right to ask questions as we accept moneys for the grants that deal with performance

expectations of the grants and the personnel matters associated with filling vacancies.

Mr. Castillo: What I would like to add, Council Chair is in the past, you have been very flexible in interpreting what is relevant and what is not relevant, and the VOCA program does touch upon the Victim Witness Program and whether or not that is relevant is your call, and your call to make.

Chair Furfaro: Thank you.

Mr. Castillo: You are welcome.

Chair Furfaro: Do you have a question for the County Attorney, Mr. Bynum?

Mr. Bynum: I do.

Chair Furfaro: Mr. Bynum, you have the floor.

Mr. Bynum: This agenda item says that it is about the VOCA program that funds the Victim Witness Program. It also funds the YWCA. In 2009 I tried to ask questions about how the VOCA program funds and mingle with the general funds that we put out and State funds. I was not allowed to ask those questions. I filed an OIP complaint that they finally said this year that it was proper to ask questions that had a nexus and part of our due diligence was that this is about VOCA that funds Victim Witness. I want to speak not about individuals or specific cases, but about the staffing for Victim Witness during the tenure of the Prosecutor's Office. I believe I have a constitutional right and duty to ask those questions. OIP has ruled on that and I want to know can I ask questions about the positions during the term that are funded by this grant?

Mr. Castillo: Councilmember Bynum, I was seated right there in 2009 when this occurred and I am fully aware of the OIP opinion, and that is part of my recommendation to Chair Furfaro. That is why I am saying that he has been, the Chair has been flexible. This is about Victim Witness, and it is relevant to this agenda item. I do not make that call. The Chair does.

Mr. Bynum: So I think OIP has some weight in this State?

Mr. Castillo: That is why I am saying that I agree with OIP.

Mr. Bynum: Mr. Attorney, I do not see other Departments being reluctant to discuss their programs and hide behind...

Chair Furfaro: Excuse me. Excuse me. That is not an interpretation for the County Attorney to make.

Mr. Bynum: Excuse me, do I have the floor or not?

Chair Furfaro: You have the floor, but I want to make sure we understand how we handle other...

Mr. Bynum: So I believe...

Chair Furfaro: I always have the right to override what is on the floor.

Mr. Bynum: Point of order.

Chair Furfaro: We will take a recess right now. We are in recess, everyone.

There being no objections, the meeting was in recess at 8:35 a.m.

The meeting reconvened at 9:17 a.m. and proceeded as follows:

Chair Furfaro: We are back from our recess. I just want to clarify a couple of items here first of all. I was wrong by not calling a point of order, but does that rest with me? It is very clear that that rests with me and in Roberts Rules of order, Rule No. 61, as well as our own Rules 3 and 6. So my apologies earlier in the day I made Mr. Rapozo reference a rule number and that can be further discussed amongst ourselves. My apologies is offered for not calling a point of order before I interrupted, but certainly in the items that I just referenced, my authority is covered there.

Now I want to make sure going forward that we understand what I have interpreted and what I have ruled. On the VOCA grant, and opening the questions from the Council, whether they are Councilmember Yukimura's questions or Mr. Bynum's question, I think this Council reserves the right, whether we are approving or not approving any agenda item and/or we are just receiving an item. We are the ultimate body that reserves the right to ask questions about that operation as this piece is posted. Subsequently, my earliest ruling about Vice Chair Yukimura's ability to ask the questions about staffing and those current positions and the role of those positions has not changed. That has not changed from the very beginning. The questions I have about items that deal with past personnel actions and so forth and quite fortunately, or unfortunately for me in 2009 I was not the Chair. But those items are handled in a different agenda venue on personnel matters. But I want the Prosecuting Attorney's Office to know that any questions about this grant are permitted, which I ruled earlier about staffing and going forward on your operational application of this grant. So can I have the Office of the Prosecuting Attorney, as well as Grant Administrator back. Before you introduce yourself, Mr. Bynum?

Mr. Bynum: When we had a recess, I had the floor and I was talking to the County Attorney.

Chair Furfaro: I do not see him here. If we can get him.

Mr. Bynum: He is here.

Chair Furfaro: Where? Mr. Bynum wants to revisit some questions with you.

AL CASTILLO, JR., COUNTY ATTORNEY: County Attorney Al Castillo, good morning again.

Mr. Bynum: Good morning, Al. I just want to have real clarity on this. We started to talk about an OIP ruling that says it is okay to ask questions.

I have no intention of asking personnel issues regarding any specific individual. I want to ask questions about staffing during the tenure of the Prosecutor's Office that is funded by VOCA, among other ways. So my understanding is that I can ask about positions and the status of those positions, just not the individuals involved, correct, or the circumstances...?

Mr. Castillo: Yes. For me, I would opine that would be relevant, but then my opinion is just my opinion on this side of the railing.

Mr. Bynum: Thank you.

Chair Furfaro: Thank you. So you concur the parameters that I have set are my authority?

Mr. Castillo: Yes.

Chair Furfaro: Thank you. Can I have the Prosecutor's Office back up? Thank you very much. I am going to ask you to introduce yourself again.

JAKE DELAPLANE, FIRST DEPUTY PROSECUTING ATTORNEY: For the record, Jake Delaplane, First Deputy Prosecuting Attorney.

JAMIE CHONG, GRANT COORDINATOR: Jamie Chong, Grant Coordinator.

Chair Furfaro: Jake, I want to make sure you understand my ruling. I think Mr. Bynum agrees with my ruling and I think Vice Chair Yukimura agrees with my ruling. Questions will be focused on the role, staffing and requirements of applying and managing this grant. Those questions are pertinent and can be asked, do you understand.

Mr. Delaplane: I do. I did want to respond to a comment that was made about reluctance to talk about this and hiding behind language that Mr. Bynum said.

Chair Furfaro: I do not think we need to revisit that, because clearly "hiding behind something" is not part of the decorum of this Council. We have taken a recess and that is behind us now. But you are being asked to respond to questions as I have summarized them earlier about staffing, the management of this grant, and its application.

Mr. Delaplane: Sure. I do have one clarification, Mr. Chair, that I guess I am requesting from the Chair. Because I am just a little bit confused what the County Attorney said and what your ruling was, and so any questions revolving around staffing currently at the office, but we are not looking to the past?

Chair Furfaro: Currently under the office as it relates to VOCA.

Mr. Delaplane: To VOCA.

Chair Furfaro: Right. We are not going to address any questions about personnel matters from the past. In this particular forum, it is my interpretation that governs this body. So we are open to those questions and as the

County Attorney said in the past, I have been very broad and so as it relates to this grant application, those questions are open.

Mr. Delaplane: Thank you.

Chair Furfaro: Vice Chair Yukimura, did you want the floor again?

Ms. Yukimura: Yes, thank you. I guess it would help if you could give us the organizational chart for your Victim Witness Program, or your overall program that shows how they are integrated into your...how Victim Witness services are integrated into your overall structure?

Mr. Delaplane: We can provide an organizational chart to you.

Ms. Yukimura: Can you call your office to have it sent over while we are having this discussion?

Mr. Delaplane: I am not sure anybody is available to do that because our Grant Coordinator is here with me today.

Ms. Yukimura: Well, then please describe it right now.

Mr. Delaplane: The question is the organizational structure?

Ms. Yukimura: As your Victim Witness Program is integrated into the overall structure?

Mr. Delaplane: I am sure as you all know, as we have given many presentations to this body and we tend to have lengthy presentations for the budget, we go over that organizational structure. As we stated before, we have a vertical prosecution structure in our office, which means from start to finish, from intake to conclusion, the same attorney and same unit of people handle cases depending on what the case type is. So for example, a sexual assault case, when a sexual assault case comes into our office from the Police Department, it is reviewed by our Deputy Prosecuting Attorney that handles sexual assault cases. At the same time it is determined who the victims are in that case, and the victim information is given to our Victim Witness Counselor, who makes the victim contact and basically ushers the victim through the Court process every step of the way. So whether they are needed at a grand jury proceeding or a preliminary hearing or whatever that initial phase is, all the way through to the end, when they may be getting compensation money or anything like that. There is also a Clerk assigned to that case as well and they handle the same case all the way through. So you have a team made up of a Deputy Prosecuting Attorney, a Victim Witness Counselor, and a Legal Clerk that take a case from start to finish all the way through.

Ms. Yukimura: So the Victim Witness person is under the supervision of the Deputy Attorney?

Mr. Delaplane: It is an indirect supervision.

Ms. Yukimura: What is indirect supervision?

Mr. Delaplane: They do not have supervisory authority, they do not initiate any disciplinary action, if disciplinary action is needed.

Ms. Yukimura: In the chart, how does it look?

Mr. Delaplane: Under the chart they would fall under the Administration, which it would be under me, and I am under Shaylene. You have Prosecutor, First Deputy, and then you have your different divisions under that.

Ms. Yukimura: Is Victim Witness a division?

Mr. Delaplane: It is not necessarily its own separate division. They operate again within the vertical prosecution structure.

Ms. Yukimura: Who do they answer to?

Mr. Delaplane: Me or Shaylene. So ultimately Shaylene as the Department Head. As the Deputy Department Head they would report to me.

Ms. Yukimura: So if it is the chart then you have individual Victim Witness people under you or Shaylene?

Mr. Delaplane: Yes.

Ms. Yukimura: Okay. You kept saying in a previous meeting that, let me quote it exactly, "that the Victim Witness Program in and of itself does not exist?"

Mr. Delaplane: Yes.

Ms. Yukimura: So you mean there is no division of Victim Witness services?

Mr. Delaplane: I am not sure what you are quoting me from.

Ms. Yukimura: The minutes of January 19, 2012.

Mr. Delaplane: I recall that well. We do not have a separate Victim Witness program, and just to clarify that, we do not have a Division of Victim Witness Counselors that operate independently from the rest of the office. Our Victim Witness Counselors are integrated into our vertical prosecution structure and so as I explained before, they are part of a team of people that handle a case all the way through.

Ms. Yukimura: So how many Victim Witness Counselors do you have in your office?

Mr. Delaplane: We currently have 3 positions in our office.

Ms. Yukimura: Okay. And how many are funded by VOCA?

Mr. Delaplane: One.

Ms. Yukimura: Okay.

Mr. Delaplane: Victim Witness Counselor I, Victim Witness Counselor is funded by VOCA.

Ms. Yukimura: You have Program Support Technicians for Victim Witness Counselors?

Mr. Delaplane: Yes.

Ms. Yukimura: So how many Program Support Technicians related to Victim Witness do you have in your office?

Mr. Delaplane: One.

Ms. Yukimura: So that Program Support Technician supports all the Victim Witness Counselors?

Mr. Delaplane: Yes.

Ms. Yukimura: Okay. And this grant you are asking for would basically fund a Victim Witness Counselor, a Program Support Technician that is fulltime? No, it cannot be fulltime because there is \$10,000.00 allocated to that.

Ms. Chong: Part of her salary is paid with State funds from the Victim Witness State Funds.

Ms. Yukimura: Okay. So how much is...and no County money?

Ms. Chong: No County money. I think it is a 70% VOCA, 30% FTE from the State Funds.

Ms. Yukimura: So we are looking at a salary level of what?

Ms. Chong: It is about between \$27,000.00 and \$30,000.00. I am not too sure.

Ms. Yukimura: \$10,000.00 of that, \$10,900.00 of that comes from the grant plus fringe.

Ms. Chong: Yes.

Ms. Yukimura: Alright. I think that is all the questions that have I right now. Thank you.

Chair Furfaro: Mr. Bynum.

Mr. Bynum: In 2009 when the current term of the Prosecutor started, how many Victim Witness employees were there?

Mr. Delaplane: Based on the agenda item today we were not prepared to discuss the entire history of the Victim Witness Program with our office. So we were prepared for today's agenda item. If you would like to send over some inquiries in writing, we would certainly be happy to respond.

Mr. Delaplane: Jamie knows the answer to this question. Is it not true that when the current Prosecutor took office there were 5 Victim Witness employees?

Mr. Delaplane: Again, we are not prepared to discuss the entire history of the Victim Witness Program and then the change in structure.

Mr. Bynum: Do you agree, Mr. Delaplane, for us to do due diligence, we need to know how VOCA funds are used?

Mr. Delaplane: Again, I do not know if that is an appropriate question for me as to what I believe your role is here today.

Mr. Bynum: So you will not answer the question on how many employees there were in 2009?

Mr. Delaplane: Again, I think that one, I do not believe that it is on the agenda today. We are talking about our VOCA budget as we are requesting for it on the agenda today. I know that the Chair has already...

Mr. Bynum: During the course of last fiscal year, how many Victim Witness employees were there?

Mr. Delaplane: Again, we are talking about the VOCA budget for this year. So again, I would ask the Chair for a clarification as to whether this falls within the parameters that you have set before.

Mr. Bynum: We are talking about how many positions, what changes have been made, what is the impact on how the VOCA funding is distributed. Those are due diligence questions that I have been trying to get answered since 2009. VOCA is before us, some of the VOCA funding goes to fund Victim Witness positions, some goes to the YWCA, but we also have General Fund money that goes to the YWCA. Jamie just said we have State funds that go...it has been our practice on the Council to understand how those funds interrelate in order to make good decisions about this. So I just want to know...do you disagree that when the Prosecutor's office took over, there were 5 Victim Witness employees?

Mr. Delaplane: Again, I would ask to defer to the Chair as to whether this talking about the past...

Mr. Bynum: You described the structure of the Victim Witness staffing, that 3 current Victim Witness Counselors answer directly to the Administration. Was there a time previous where there was a Victim Witness Coordinator and the structure was different?

Mr. Delaplane: Again, I am not going to be discussing anything in the past as far as the past structure.

Mr. Bynum: So you said you did not know where I was going when I was making a statement, it is because I never finished the question. I was interrupted halfway through the comment, right? It is not my experience that Department Heads choose to use interpretations of the personnel matters that our County Attorney just said are inaccurate to have a wide-ranging, open, transparent

discussion about their Department. That is all I am asking. Have the courtesy to discuss how this staffing has changed over time. So I will just make a statement. When the Prosecutor's Office came in, there were 5 Victim Witness Counselors. There was a Supervisor of that division. Is it not accurate that 2 of those positions were terminated 3 years ago?

Mr. Delaplane: Again, this is not about hiding behind anything, this is not about reluctance not to answer the questions, this is about staying on topic, staying on the agenda item today.

Mr. Bynum: Mr. Delaplane, have you reviewed the OIP opinion that I am referring to?

Mr. Delaplane: Again the OIP opinion is not something that is not on the agenda here today. I am here to discuss our application for the grant funding for VOCA.

Mr. Bynum: The OIP opinion is about just this discussion. OIP is saying that it was appropriate to talk about the various funding sources and the history of staffing, that that was an appropriate discussion for the Council. So you have the Office of Information Practices, which is set up by the State to determine these matters, in essence saying this is proper, and you are refusing to engage in that discussion.

Mr. Delaplane: I am not refusing to engage in a discussion that is related to the agenda item today. Again, I am trying to follow proper procedures here and, as much as I know you want this to be part of today's agenda, again, I am telling you that we are here today to discuss the agenda item of the VOCA application that we put in for this year. Again, I will not be answering questions related to 2009.

Mr. Bynum: Is it not true during the previous fiscal year, at one point there were 3 Victim Witness Counselors, and another point there were 4, and then again there were 3?

Mr. Delaplane: Again, I am not going to be discussing anything that relates to the past.

Chair Furfaro: Mr. Bynum, would you yield the floor for me to ask a question here?

Mr. Bynum: Yes, Sir.

Chair Furfaro: If we send over a number of questions for the purposes of getting some history on the staffing levels for this VOCA Program, is it reasonable for you to answer those questions that we send over in writing, and we can post another agenda item to discuss the history of VOCA staffing?

Mr. Delaplane: Sure, if the agenda item is the history of VOCA staffing and not the current application for VOCA funding, absolutely.

Chair Furfaro: I am making that interpretation. If we send the questions over and including the understanding of the current staffing, the item before us today is simply about receiving this item, but for us to have an

opportunity to reconstruct the history should be a new agenda item. If I send it over, within a reasonable period of time of 30 days or so, know that I would post a new agenda item so we can have this discussion. Is that acceptable?

Mr. Delaplane: Absolutely. I believe that is the proper procedure. My answers to Mr. Bynum's questions today are about procedure, it is not about trying to hide behind the agenda item which I think...

Chair Furfaro: I understand that. We touched upon that earlier today, which led us to the recess. You are in agreement of what I just summarized?

Mr. Delaplane: Yes.

Chair Furfaro: I will allow those questions to go over under my signature through Mr. Bynum, because this is the full Council meeting?

Mr. Delaplane: Thank you.

Mr. Bynum: May I resume now?

Mr. Bynum: Yes.

Mr. Bynum: Is it accurate that the VOCA funding is a slight increase from the previous year?

Mr. Delaplane: I believe it is...

Chair Furfaro: It is \$3,900.00.

Mr. Delaplane: \$3,900.00 increase, that sounds about right.

Mr. Bynum: So over the last 4 years VOCA funding has remained fairly consistent and increased a little bit, correct? And also during that 4 year period there was ARRA funding for one year that increased Victim Witness, correct?

Ms. Chong: Correct.

Mr. Bynum: And of the portion, the \$207 or whatever it is now, what portion will go to the County and what portion goes to the YWCA?

Ms. Chong: The budget is included, but I am not sure what you mean by what portion goes to the County? Do you mean the County positions or the positions that the grant is paying for? \$90,000.00 is going to go to the YWCA of this current year.

Mr. Bynum: Of this current year's grant.

Ms. Chong: Right.

Mr. Bynum: And the previous year, how many dollars?

Mr. Chong: I believe a little over \$100,000.00.

Mr. Bynum: So that includes the increase that they received mid-year?

Ms. Chong: I believe so.

Mr. Bynum: I will save, seeing how I am not going to get most of my questions answered today, I think I am done for now.

Chair Furfaro: Members, we set aside an hour for this and we have only scratched the surface on the first item today. So if there are any more questions, I would entertain adding them to the correspondence I will send over to Jake. Okay? Vice Chair Yukimura.

Ms. Yukimura: So with your 3 positions of Victim Witness Counselors, do you have sufficient support to do the Victim Witness work in your office?

Mr. Delaplane: Yes.

Ms. Yukimura: And how do you know that?

Mr. Delaplane: Periodically we do a review of the cases that are assigned to our different Victim Witness Counselors. So that not only includes what they are doing, but also includes what the Attorneys and Clerks are doing as a unit. So we look at all of our units. Every month we have unit meetings. Jamie, our Grant Coordinator sits in on the meetings and I sit in on the meetings as well. We go over current caseloads, we talk about what our current needs are, if there are any shortfalls or areas that we need to focus more on. We discuss those as well. So the caseloads are assessed on a monthly basis and sometimes even more than that as far as what is happening with each Counselor.

Ms. Yukimura: So we have heard stories of victims not being contacted for many, many months, and being quite upset that they have not been. Is that not a problem?

Mr. Delaplane: Again, I do not know what stories you are referring to, and what your basis for that is and that seems a bit of a question out of left-field. I can tell you that our Victim Witness Counselors and our Attorneys have very good relations with our victims and are very prompt in getting back to our victims. Again, I do not know what you are addressing. I can assure you that our...both our Victim Witness Staff and our Attorneys do a very good job in contacting and maintaining contact with our victims.

Ms. Yukimura: How do you know that?

Mr. Delaplane: We have feedback from our victims on a regular basis. I speak with victims, and even our Legal Clerk Supervisors speak with victims. We have victims come to our office everyday and write us letters of appreciation all the time.

Ms. Yukimura: But that does not tell you...so, actually to really know, you would need a third-party independent auditor to contact the victims.

Mr. Delaplane: I disagree completely because when you hear from the victims themselves what a great job that the Prosecuting Attorney has done in their case, and what a great job...

Ms. Yukimura: I am sure there are some of those, but are you getting all the feedback?

Mr. Delaplane: Do we have every single victim coming to our office?

Ms. Yukimura: Are you getting systematic feedback about our services?

Mr. Delaplane: We do. We do get systematic feedback and we have victim satisfaction surveys that we send out.

Ms. Chong: We do send out surveys to all the victims that the Victim Witness Counselors work with. So we have them on file.

Ms. Yukimura: Who are the ones that contact your victims? You just send out the survey.

Ms. Chong: The Program Support Technician has a list from the Victim Witness Counselors that she receives and she sends out the surveys.

Ms. Yukimura: What is the return rate?

Ms. Chong: I am not too sure. I have to go back and look at that.

Ms. Yukimura: Okay. So we will ask for that kind of information then. Thank you.

Chair Furfaro: So as a follow-up to Vice Chair Yukimura, perhaps it is our role when we get feedback verbally that we can send it over to you in some kind of a written form and I think you would like to do your due diligence in finding out how we can improve on things based on what is put to the Council. I would hope that you would treat that with an understanding that when people are surfacing their complaints with us, we would certainly like to get the feedback in writing.

Mr. Delaplane: Sure, if there are complaints that come to the Council, it would be certainly appropriate for you to forward those to our office instead of simply referencing them as stories you have heard on the Council floor.

Chair Furfaro: Let me assure you, I will make sure that that happens and that we get it in writing. As I said to you earlier, I am going to compress Mr. Bynum's questions and any other Councilmember's questions that come up about application, performance and so forth, and staffing, and I would appreciate you responding to us, so we can put a new agenda item on.

Mr. Delaplane: We will. Thank you.

Ms. Yukimura: One last question.

Chair Furfaro: One last question. Go right ahead.

Ms. Yukimura: Do you have a system that measures how much time before a victim is contacted, a Victim Witness is contacted after the matter has been referred to your office?

Mr. Delaplane: I am not sure that I can fully answer that question as there are different ways that matters get referred to our office. So I am not sure that that kind of measurement that you are talking about would be something that could even be done.

Ms. Yukimura: Do you not have a system of documenting...when something is referred to, at some point there is a receipt date or some measure of when things are referred?

Mr. Delaplane: Because there they are all referred differently; we do have an intake date.

Ms. Yukimura: Okay.

Mr. Delaplane: Based on when the police report comes in, but sometimes complaints come in other ways and actually that is fairly common.

Ms. Yukimura: I am not concerned about complaints, I am concerned about referrals for your work. But it sounds like intake date would be the one.

Mr. Delaplane: It can be. Again, it just depends on how a case progresses, whether it comes directly from the Police Department or some other entity, whether it is a Federal Agency or State Agency, or whether it is a matter that comes to us for further review, or the investigation has not been completed yet.

Ms. Yukimura: I am still thinking that you must have a way of indicating when your office begins to take action on a case.

Mr. Delaplane: Again, because we take so many different kinds of actions, there is not one standard we can point to as this is the date that we are going to measure all Victim Witness contact from.

Ms. Yukimura: Well, certainly the majority must be...

Mr. Delaplane: Well, I can tell you about the intake...

Chair Furfaro: I would appreciate if you would ask a question, you would let them respond to the whole question. Please continue, and I will put this in as a question. When someone comes in, we would like to know what the critical path is.

Mr. Delaplane: Sure.

Chair Furfaro: Okay? We will put that over in a question.

Mr. Delaplane: Well I can answer that very simply right now. I think that it requires some clarification. Typically when a report comes in from the

Police Department, it comes to our office through our intake division. There is a Clerk who enters it into the computers, we receive a report numbers 2012-001. That complaint, not that complaint, but that report then goes to our Deputy Prosecutor that is assigned to that type of case and they do screening. At that time it is also assigned to a Victim Witness Counselor. So immediately from the intake process the Victim Witness Counselor is already looking at the case, identifying victims and contacting victims. Whether there is a ticking clock, whether we have a measurement from the date that it comes into our office from the time, to the time that the victim is first contacted, there is not some ticking clock somewhere that says, there have been 5 days and 14 hours that have elapsed since this was brought into our office. But it could be measured in the sense that our Victim Witness Counselors log all of the contacts that they have. So if one were to go back and look at an intake date versus our Victim Witness Counselor log of when they were able to first make contact with the victim, that could be measured. However, there is no system in place currently that again, has that ticking clock where we could easily go and point and say, hey 95% of our cases the victim was contacted within 24 hours. That is not something that we keep a current measure on.

Ms. Yukimura: So that is exactly what I am talking about though. I am not talking about hours. I mean, it is a matter of weeks or months...it is a way to measure your service that is all I am asking about, in a more objective way than letters from some, which I think are valid input, but they do not give you the big picture.

Mr. Delaplane: Sure, and with implementation of our new case system we are looking at those sorts of performance measures that we can incorporate into our current structure to see what we are doing well and what we can do better.

Ms. Yukimura: That is excellent.

Chair Furfaro: So the question will still come over about a critical path, but as you just explained to Vice Chair Yukimura, that could be a very useful tool for you.

Mr. Delaplane: Thank you.

Chair Furfaro: I would like to go and see if we have personal testimony from others on this item. Then we will go on to take a vote on receiving this. Is there anyone in the audience that would like to offer testimony on this item? Mr. Mickens.

GLENN MICKENS, RESIDENT: Thank you, Jay. For the record, Glenn Mickens. I just have a short comment and a question. It appears that we have 3 communications here. One asking for approval to use Federal funds for the VOCA Expansion Program. One asking for State funds to be used for the P.O.H.A.K.U diversion program, and one for the Victim Witness Program. The question is why are we holding this Special Council Meeting to approve these issues when grants and State and Federal moneys have been routinely approved on a regular Council agendas in the past, from what I have heard? In other words, I cannot understand why these same issues in the past have been received, but they are now before a Special Council Meeting. We have suddenly gone in-depth into the workings of these programs, which I have never heard before. Maybe you can tell me why, Jay, we are here?

Chair Furfaro: You want to hear from me, why?

Mr. Mickens: You are always good enough...

Chair Furfaro: I will share with you. First of all the Prosecuting Attorney does not drive the Council's agenda. The agenda at the Council is determined the by whoever is the Chairman. This request for VOCA approval came over with some urgency. When we got it, I put it on a Special Council Meeting. That is why it is a Special Council Meeting. It still those come to us. So I also have the authority to look at putting any agenda item on the Council by our rules and I will be glad to give you...120 days out. When we received this, I think we turned this around in about 12 days, because of the urgency. But that is reserved by whoever is the Council Chair. And I am the Council Chair, and I sense that we wanted to get it on here. So when you ask why it is a Special Council, it is based on the fact that we were informed there was urgency.

Mr. Mickens: So this originated then from the Prosecutor's Office to you, and that is why it is now on the agenda? Okay, that is my understanding.

Chair Furfaro: So you are clear?

Mr. Mickens: Yes.

Chair Furfaro: Anything that has to do with money, receiving grants and so forth, whatever those standards specific are and so forth, require the Council's approval. I have tried to put it on the agenda as quickly as possible so there is minimum delay.

Mr. Mickens: Sure. But the point was that I have never heard it in the past. I have seen you go through these agendas like that, for approving Federal or State grants and things like that and it is automatically received. So I did not understand how this happened to get on a special agenda, but now you explained that the Prosecutor's Office was the one to instigate...want to have this on the agenda.

Chair Furfaro: The Council reserves the right, I want to make sure you understand. The Council reserves the right for anything that is repetitive or so forth, we can place those on for information. These moneys are going through our books.

Mr. Mickens: Right.

Chair Furfaro: If you would like, at another time I can give you an overview of all the grants that come through the County and you can track them, if you would like that? But we will not do that on this floor. I just answered your question. That is our *kuleana*, okay?

Mr. Mickens: Okay.

Chair Furfaro: No sense to get...just leave it at that

Mr. Mickens: Thank you, Jay.

Chair Furfaro: Anyone else wishing to speak on this item?

KEN TAYLOR, RESIDENT: Chair, Members of Council, my name is Ken Taylor. Well, it is election time and the venom is flowing. Your agenda item today is simply a request to apply, receive and expend County of Kaua'i VOCA expansion program Federal funds in the amount of \$203,109.00, and approve and indemnify the State of Hawai'i, Department of Attorney General for salaries, fringe and operational expenses for the Office of the Prosecuting Attorney. That is all that the agenda item is. It is a simple thing. You say yes or no. All of this monkey business that is going on today is very sickening and the people in this County are getting sick and tired, tired of this kind of nonsense. It is not due diligence. It is witch-hunting. I am really very sorry that I have to sit here and raise these issues. Whether you agree with me or not is immaterial. What is important is that this is my opinion of what is going on, and I am very sad that you folks are sitting here participating in this kind of nonsense, when we have much more important issues to deal with in this County. And so I hope you will get off this monkey business bandwagon, take the item as it is put on the agenda, say yes or no to it, and let us move on. Thank you.

Chair Furfaro: One moment, Ken. Vice Chair Yukimura has a question for you.

Ms. Yukimura: Ken, how do you think we can say yes or no unless we know what the program is about.

Mr. Taylor: I am sorry?

Ms. Yukimura: How can we say yes or no responsibly without knowing what the program is about?

Mr. Taylor: It is my understanding that the VOCA program has been around for at least 10-15 years, maybe as much as 20 plus years. It is not a new program. It has been approved year after year, I do not know how often these activities take place, but it has been going on for a long time. It is not a new project, it is not a new program, it is just an expansion of an existing program. In the short years that I have been coming to this Council, every time there has been a request to apply, receive and expend, this County has rubberstamped those items, every time they have been on the agenda.

Ms. Yukimura: Mr. Taylor, you think that we should rubberstamp these grant applications even though they might be, might have the potential of causing us extra liability or future costs or maybe the changes in how the programs have been managed might be affecting our constituents? You would say that of Planning grants, grants coming to Planning and grants coming to Public Works, that is how you feel the Council should act?

Mr. Taylor: No, that is not how I feel you should act, but you should be consistent in your actions. And this today is not a consistency in your actions. So I am sorry that you feel that way.

Chair Furfaro: Any more questions for Mr. Taylor? Ken, I want you to know, it is on my initiative that we got an interpretation on that. The fact of the matter is that what we look at, these reoccurring grants, the one thing that does require to come back to the Council, just so you are clear, is the indemnification,

okay? This has to come back on the indemnification and as I explained earlier, when it came I gave it some urgency. But let us be very clear, it requires indemnification of us for the State and so forth. So procedurally, it does come back to the agenda. Just for your information.

Mr. Taylor:

Thank you.

Chair Furfaro: Okay, Ken. Anyone else who wants to testify on this item? If not, I would like to call the meeting back to order. Members, we have an opportunity for discussion now. And as mentioned earlier, if you have questions I will be sending over to the Prosecutor's Office, please submit them to the staff. Mr. Bynum, you have the floor.

The meeting was called back to order, and proceeded as follows:

Mr. Bynum: Thank you. Now I am very pleased that in this County we have a public record. What we say here, what we do here, the communications is all in the volume of data. And the public record on this issue is pretty clear to me.

In 2009 there were 5 Victim Witness Counselors at the Office of the Prosecuting Attorney. There was a Supervisor and 4 workers. In her first budget, the County Prosecutor eliminated 2 positions. The circumstances of how those eliminations happened is a separate item. But the fact is that it went from a Supervisor and 4 employees to direct supervision; the Prosecutor has talked about that. In the course of, a long established outreach program that outreached to victims who do not get prosecuted, not all victims end up at the Prosecutor's Office. Sometimes we do not even know who the perpetrator is, so the Police might not refer it because of the lack or the Prosecutor may choose to decline prosecution, which is routine when they do not have enough evidence to proceed.

We had an outreach program to outreach go to those victims and let them know about their victims in crime compensation rights, and that program by the Prosecutor's words has been eliminated. It has become vertical prosecution where the Victim Witness people deal with victims who are actively being prosecuted. As a result of that, I think there are statistics about victim crime compensation, which are down dramatically in the County of Kaua'i over the last 4 years. Fewer victims are receiving compensation, fewer claims are being filed.

So we have lost those positions, we lost outreach, it has had an impact on our community. When I tried to ask these questions about how VOCA integrates with State funding in 2009 I was not allowed to continue by the then Council Chair. Later OIP said those questions are correct and it is our due diligence to look at all funding sources and how they integrate. But talking about funding, we heard today that VOCA has not been reduced over the last 4 years; it has had a slight increase. The County Attorney's County-funded budget in 2009 was \$1.75 million. This year, last year's fiscal budget...

Chair Furfaro:

Excuse me, Mr. Bynum, you said the County Attorney's budget.

Mr. Bynum: I am sorry, thank you. The Prosecuting Attorney's budget in 2009 was \$1.75 million. The budget last fiscal year was \$3.8 million; more than double in a three-year period. And so there are sufficient funds but how

victims are being serviced and the impact of the decisions that are made are appropriate questions for this Council to ask.

We were not allowed, I was not allowed to ask them in 2009. I was not allowed to ask them last year because of various maneuvers and claims that I had conflicts of interest. You saw Mr. Delaplane is not prepared to answer those questions here today. During budget we did not get those questions clarified. We sent over questions in writing, and answers were not completely forthcoming. We did not receive all of the answers in writing that we requested. These are serious issues. It impacts real people, victims in our County. Many people have concerns about it and we have been kept from having just a transparent, open dialogue about these issues and many other issues relating to the Prosecutor's office. It is not going to happen today. We have 2 other agenda items and we will discuss those separately. I have been precluded from fulfilling my duty to the people of Kaua'i and my constitutional first amendment rights to engage in vigorous debate. That is our job. We can do it respectfully, but we cannot do it if answers are not forthcoming and it is like, is this a personnel matter? No, the County Attorney says it is not, it is a position matter. But we cannot discuss it today. We are not prepared to do it. The Chair says we can have a separate agenda item. I am fine with that, but the track record for more than 4 years is that we have not been able to do our due diligence. And it has been a very...check the public record, it is all there. Thank you.

Chair Furfaro: Councilmember Nakamura?

Ms. Nakamura: In the interest of time, can I call for the question?

Chair Furfaro: Yes.

Mr. Rapozo: Mr. Chair?

Chair Furfaro: Yes, Mr. Rapozo?

Mr. Rapozo: I do want to make a comment, if I may?

Chair Furfaro: Okay you have the floor.

Mr. Rapozo: I just want to say something, because I did have the opportunity to work at the Prosecutor's Office for a year and a half as an Investigator. I did have the opportunity to work with the Victim Witness Counselor and let me say that Marla Lam who works at the Prosecutor's Office as a Victim Witness Counselor is an extremely effective and efficient employee. What I heard from Mr. Bynum is that there is no outreach. That is not true. That is simply not true. That office under Marla and the rest of the Victim Witness Counselors, they do provide outreach. I think to characterize the Victim Witness program as being not working and that, in fact, the community is being hurt, I think it is not true. Miss Yukimura talked about some complaints that she has heard, yet she never turned it over to the Prosecuting Attorney's Office. Whenever I get a complaint from the public regarding Public Works, Parks, no matter who it is, standard procedure is that we send a communication to the Department and say hey look into this complaint. But the stories we hear, this is an item to be received. Mr. Taylor said it. Last year, Mr. Chair, as I looked at the minutes for this grant, there was no discussion; absolutely no discussion, no questions. Here we are today scrutinizing the program that does help the community. It does help the community. It is working. Vertical prosecution is a deferent style of prosecution, which is the way of

the Country now. It provides a better connection to the victim. So I just want to make sure that the comments made are factual. I know, I was there. I did work there, I worked with the Marla on many cases. I worked with the other Victim Witness Counselors as well. But to say it is not working and that the community is suffering is not an accurate statement. I just want to state that for the record. I think it is an insult to our great Victim Witness Counselors. They do a great job at the Prosecutor's Office. It is not an easy job. It is not an easy job and they do a very good job. If, in fact, any of us on this table receives a complaint about any program in this County, I would hope that we send it across to be looked at, and not just bring it up on the Council floor and say we hear stories that the program is not working. In my opinion that is not appropriate. Thank you.

Chair Furfaro: I am not going to recognize you for a second time as we have a Councilmember that wants to move forward. Councilmember Yukimura.

Ms. Yukimura: Thank you, Mr. Chair. I want to say that some of the concerns about the Victim Witness office are coming from Victim Witness Counselors who are very dedicated. My questions are not in any way trying to say that the Victim Witness Counselors are not doing their job. They are professionals and they know, they are actually very committed to the victims and to servicing them. But the new arrangements in the office have raised some questions and I think I have a right to say there are these issues and ask for answers from the office that is providing those services. And the reason I asked for some objective data, like measurements in terms of times of response, is that it is not just somebody's opinion, but it is something that we are measuring in terms of whether we are meeting the needs of people. I believe there have been many concerns raised from the community and from people who know this profession and work about the provision of services for Victim Witnesses through the Prosecuting Attorney's Office. That is why I am asking the questions that I feel are my responsibility as a Councilmember.

Chair Furfaro: Councilmember Nakamura, you called for the question. Do I have a second? We have a second. Call for the question. The question was to receive this item.

Ms. Nakamura called for the question, seconded by Mr. Chang.

Ms. Yukimura: Point of order?

Chair Furfaro: You have a number for the rule, since I was called on the number. Give me a number to the rule before I recognize you. Give me a number for the rule.

Ms. Yukimura: I will state the rule. The question, I do not mean to cause any trouble, the motion for a question is a motion to close debate. And it requires a two-thirds vote, if that is where we are going.

Chair Furfaro: The motion on the table is to receive, it was made earlier. I want to make sure you all understand and the audience as well, go back and check your rule, Rule 13c, members about to speak needs to be addressed and identified by the Chair and the comments need to be confined to the discussion on the table while we are trying to avoid personalities, that is the rule. That is the rule. Okay? So let us use the Hawaiian value of *kokua* and let us *kokua* the rules. I am going to recognize you a second time, Mr. Bynum, but I want to receive this item

and we are 1 hour and 10 minutes...no, we are one and a half hours into a Special Council Meeting that had 3 items on it and we have gotten to item 1 so far, and it is an item to receive. You have the floor.

Mr. Bynum: Thank you. I just do not want my comments characterized by Mr. Rapozo. We were going to talk about individuals, but Marla and Jennifer and Diana, who are the 3 current Victim Witness Counselors I worked with for years. I am sure they are doing an outstanding job with the parameters that they have. My questions are about changes in the staffing and structure of the program and its impact on the delivery of services to all victims in our community. Those I think are appropriate discussions. I do not think Jennifer, Diana, or Marla would be upset by any comment that I made here today. We have yet to have that open, transparent discussion about the impact of these services.

Chair Furfaro: Thank you. As I can remind all Members, I have agreed under my signature to send the composition of questions over for a new agenda item. Now we are calling for the question. I have a motion and a second. This is to receive.

The motion to receive C 2012-335 was then put, and unanimously carried.

Chair Furfaro: Let the record note any nays? There are no nays. Madame Clerk, would you read the next item?

C 2012-336 Communication (07/20/2012) from the Prosecuting Attorney, requesting Council approval to apply, receive and expend State of Hawai'i, Office of Youth Services funds for the Keiki P.O.H.A.K.U. Diversion Program in the amount of \$35,000.00, and approval to indemnify the State of Hawai'i, Office of Youth Services for the term commencing August 15, 2012: Mr. Rapozo moved to approve C 2012-336, seconded by Mr. Chang.

Chair Furfaro: I will suspend the rules and ask the Office of the Prosecuting Attorney to come up and again, I want to remind us of Rule 3(a)3, please. It is the Chair's duty, and I am the Chair, to maintain order and the proper decorum of conducting business. You have the floor.

There being no objections, the rules were suspended.

JAKE DELAPLANE, FIRST DEPUTY PROSECUTING ATTORNEY: For the record, Jake Delaplane, First Deputy Prosecuting Attorney.

JAMIE CHONG, GRANT COORDINATOR: Jamie Chong, Grant Coordinator.

Chair Furfaro: I think it would help us all if you could give us an overview of Keiki P.O.H.A.K.U.

Mr. Delaplane: I just want to make sure each of the members received our Juvenile Accountability Block Grant application, just to make sure you all have that, yes?

Ms. Yukimura: I did request the submittal letter that this application, for this application. I understand it was already submitted.

Mr. Delaplane: We submitted this to the Office of Youth Services, yes.

Ms. Yukimura: Before you got approval from this body?

Mr. Delaplane: Yes.

Ms. Yukimura: So I did not get that letter, and also, the request for proposal from the Office for Youth Services.

Mr. Delaplane: Yes, it was in draft form. It is in draft form when we sent it over to the Office for Youth Services, but we can certainly provide that.

Ms. Yukimura: Okay and the request for proposal from the Office of Youth Services?

Ms. Chong: For this application it was not released under an RFP. I spoke with Ed Chardinoff from OYS, which is where the funds will come from. Part of the funding that we are looking into is a formula amount that we receive from OYS with JABG funding.

Mr. Chang: Excuse me, Chairman, can you say, just let us know what is OYS?

Ms. Chong: OYS is Office of Youth Services. The Office of Youth Services, every year we get a formula grant or a certain amount of money that is allocated to our County. I believe it is given to the County and in the past years, the Mayor's Office had indicated that our office has the ability to use the funding for the County. So part of this application or a proposal that we submitted to OYS is in draft form. They do not have an RFP that they release out. They were going to use, I believe, part of the funding for the proposal that we have for Keiki P.O.H.A.K.U was going to be part of the formula funds that our County receives, and the other half is the State portion that is allocated for the whole State.

Ms. Yukimura: So this amount of \$39,000.00, or \$35,000.00 is State moneys and?

Ms. Chong: State moneys and County formula funding.

Ms. Yukimura: I have some more questions but I can ask later.
Chair Furfaro: Excuse me, I am sorry. County formula what? What did you say?

Ms. Chong: County formula funding.

Chair Furfaro: Okay, got it. I thought we were in Indy with formula one race cars. Thank you. Any other questions?

Ms. Yukimura: Not right now.

Chair Furfaro: Not right now? Thank you, we may call you back up.

Ms. Yukimura: No, excuse me, Sir.

Chair Furfaro: Wait a minute. Let me run the meeting. You may be called back up. Since you do not have your questions ready, and in the spirit of time, I would like to get people to testify. They can come back. Do you have your questions ready?

Ms. Yukimura: Yes, but I thought that Jake was making an overall presentation and starting the overall presentation he asked if we had received this and I had just mentioned what we did not receive.

Chair Furfaro: Do you have your questions ready? No? Why do you not read through the material and as I said to them, be prepared to call them back.

Ms. Yukimura: That is fine.

Chair Furfaro: You be prepared to have a presentation after Members have an opportunity to read through the application. Okay? Thank you. Is there anyone here that wishes to testify on what is posted on our agenda as Keiki P.O.H.A.K.U? Come right up.

LAVERNE BISHOP, EXECUTIVE DIRECTOR, HALE OPIO: I am LaVerne Bishop, the Executive Director of Hale Opio. I would like to give a little history on this that is before Council today and I would like to go back since 1995, when the County did receive the Juvenile Accountability, was at that time called Incentive Block Grant moneys. The Police Department received those moneys for many years. They had, and at their request, Hale Opio submitted a proposal to them to begin Kaua'i Teen Court and we worked with the Police and the Prosecutor to this day operating Kaua'i Teen Court. The Juvenile Accountability Block Grant funds are Federal funds that come through the Office of Youth Services at the State level to the Counties. The Counties decide how those funds are used. During Mayor Kusaka's Administration the money was brought from the Administration at the Police Department into her Office under her Youth Programs Officer Sharon Agnew. Sharon went on to become the head of the Office of Youth Services under Mayor Kusaka, and when Sharon left, the money was switched over to the Office of the Prosecuting Attorney; I believe it was Mike Soong at the time who had a Grants Manager that was able to manage the funding. So Kaua'i Teen Court ended up in the Prosecutor's Office. Several years ago Kaua'i Teen Court was fully funded and became a line item in the Judiciary budget of the State of Hawai'i. During the economic downturn Kaua'i Teen Court has been receiving grant funding and some Office of the Prosecuting Attorney OJJDP moneys. I have had a chance to read this proposal just quickly. I just received it and I would like to make a couple of further comments. I believe that diversion for young people from the Juvenile Justice System is absolutely critical. The First Circuit Court did a study themselves that indicated that the further a youth penetrates the Juvenile Justice System, the more poor the outcomes are.

Chair Furfaro: Excuse me, before you go any further, that was your first 3 minutes. I am extending you additional time now.

Ms. Bishop: Thank you. I apologize. I am not aware of the time limit. Do I have 3 more minutes?

Chair Furfaro:
discretion of the Chair.

You have 3 more minutes and then it is at the

Ms. Bishop: Thank you for that information. I have not been here for a while. I would like to say that prior to referral to Family Court, I believe that diversion is very successful. I would like to say in reviewing this application, I believe there are a couple of inaccuracies when it comes to Kaua'i Teen Court that I would like to correct. Kaua'i Teen Court has always accepted status offenders. When we are fully funded, we have typically served about 400 kids a year, and that is status offenders and law violators. In the past, we have also had a process regarding this funding that requires at the County level an advisory board to review the moneys that come into the County and make recommendations about the use of the money. In the past, typically, whichever office was managing this was the convener of that Advisory Council. So there is a Juvenile Crime Enforcement Council that is required by the legislation to meet on a regular basis to make a decision about the OJJDP Juvenile Accountability Block Grant funds that come into the County. That advisory committee has not met since November of last year. And at that November meeting, there was some allocation made, but there has not been any discussion about the use of JABG moneys since that time. And so this proposal has not been vetted through that process. I would be glad to answer any questions anyone has.

Chair Furfaro: I am going to start and I just want to make sure I heard this. There is a provision in this grant that there is an advisory board?

Ms. Bishop: Yes.

Chair Furfaro: That meets regularly?

Ms. Bishop: Yes.

Chair Furfaro: And were you on that?

Ms. Bishop: Yes.

Chair Furfaro: You were?

Ms. Bishop: Yes, I have been on it since it was formed in 1989.

Chair Furfaro: And to your record the last time you met was November of 2011?

Ms. Bishop: Yes.

Chair Furfaro: And that is a grant condition?

Ms. Bishop: Yes. The OJJDP moneys requires a State Advisory Group to oversee the Federal moneys that come into the State and advise the State on the use of those juvenile justice moneys. And then each County has an advisory group that is charged with overseeing the use of the funds.

Chair Furfaro: Thank you. Councilmember Nakamura?

Ms. Nakamura: Hi, LaVerne, and thank you for your testimony this morning. When I was looking at the write-up that we all received this morning and it says here that, "juveniles that are not true first time offenders, commit certain categories of crime or is a status offender will not be eligible for acceptance into Teen Court." I think this is the rationale described to the need to create this alternative diversion program for Teens?

Ms. Bishop: Well, yes.

Ms. Nakamura: And you commented on the status offender?

Ms. Bishop: Yes.

Ms. Nakamura: I wanted to get...you did comment on the status offender, but can you comment on the true first-time offender and certain categories?

Ms. Bishop: Certainly. Youth Courts and Teen Courts Nationally have standards that our Kaua'i Teen Court follows. The Office of Juvenile Justice and Delinquency Prevention, the National Highway Safety and Transportation Board, and the Substance-Abuse and Mental Health Service Association, at the Federal level provided input into the development of youth Courts nationally. After working with the American Probation and Parole Association it was determined that true diversion is with the first detainment of a young person. That diversion typically represents on an average of 10 times that the youth has had contact with the police. But now they have been detained and, but they have committed a law violation on the average of 10 times.

So first time offenders, having the opportunity to be before a jury of their peers, be held accountable to make things *pono* and to admit their guilt, to receive logical consequences, to receive education in civics, which is not taught in school any longer, and a variety of other standards that operate and drive youth Courts nationally, and which Kaua'i Teen Court subscribes to, lends itself to this first-time offender category. Yes, status offenders, law violators are those that are eligible for diversion. Second and third-time offenders within our memorandum of agreement with the current Office of the Prosecutor are also at her discretion eligible to come into the program. We have sequestered those data because they do not follow the national model, and we report 2 separate data sets: those who have been arrested several times versus those that have only been detained for their first official detainment.

Ms. Nakamura: So are you saying that you can provide services to those who are not first-time offenders.

Ms. Bishop: I am saying that our current MOU with the Office of the Prosecuting Attorney does include that, she does refer and they refer offenders who have come into the system, that she chooses to refer, who are second and third-time offenders.

Ms. Nakamura: Okay. And are there any categories of crime where juveniles would not be admitted into Teen Court?

Ms. Bishop: Well, yes, and certainly the Prosecutor has the jurisdiction over Class A felons. So there are crimes that do not merit diversion in the eye of the office.

Ms. Nakamura: But other than the Class A felons, you would take all others?

Ms. Bishop: We have taken, we are currently taking the majority of the alcohol violations and drug offenses because they are the hardest to prosecute, because there is no evidence; the alcohol is not stored any place for successful prosecution.

Ms. Nakamura: One final question.

Chair Furfaro: You have the floor.

Ms. Nakamura: Do you have any cultural component to Teen Court?

Ms. Bishop: Our components relate to the whole idea of making things *pono*, which I think is the basis of our culture. We are making things right, between the victim and the offender. We have victim impact classes. We have panels who come in and share how they have been affected, and the offender is able to address that. We have young people select a community service that they would like to do that is based on our intake session with them and their family individually. An assessment is done of what the strengths are of the young person. Positive youth development is the most important thing we are doing here and we are sending them to something as part of their sentence that they have expressed an interest in, that they have a strength in, that they may want to do; it is key to the success of the program.

Ms. Nakamura: Thank you very much for that feedback.

Chair Furfaro: Vice Chair Yukimura.

Ms. Yukimura: Can you first of all define "status offender," because I do not think everybody understands that.

Ms. Bishop: A young person is a status offender by the fact that their status as a minor, an individual under the age of 18, who was if they were not to be that age, this would not be a violation.

Ms. Yukimura: So like alcohol?

Ms. Bishop: Runaways, truancy, and curfew.

Ms. Yukimura: Okay.

Ms. Bishop: I believe Federally, alcohol is also a status offense since Federally in some States one has to be 21.

Ms. Yukimura: Okay. Thank you. And then I believe, is Teen Court considered evidence-based?

Ms. Bishop: Yes. It is an Office of Juvenile Justice and Delinquency Prevention promising practice. Again, it has been trialed, it is in every State in the United States except Connecticut; it is in Australia, England, it is international. It is the most replicated program of juvenile justice in the United States.

Ms. Yukimura: And its success rate, I think we heard figures several years ago, but I recall they were quite impressive.

Ms. Bishop: They are remarkable when you look at all the other juvenile justice programs that are out there. That is why it is so well-replicated. On Kaua'i, Kaua'i Teen Court mirrors the National statistics. Our results last year were 90% of the law violators who came through the system did not re-offend, being followed for a year. We track statistics 2 ways. If a person goes to the doctor with bronchitis, and they are treated for bronchitis, and they do not get bronchitis for another year, we track offenses like that. If you come to us for assault, and you do not assault anybody for the year, we consider that to be our intervention and our success. But we also track whether or not they do anything else that is illegal in that year, which is not good research, but people want to know the answer to that. And so that is why I say our average with law violators is 90%, because we do have kids that are law violators that might be arrested for something else, but not for what the medicine was prescribed. Status offenders, the recidivism is 80-85%, that varies, it is lower. Kids that are status offenders, interestingly enough and nationally and here as well, are less amenable to the process. But it is better than 50%, 42%, the other programs that you look at. It is a very positive, powerful program for kids.

Ms. Yukimura: So for the law violators who did not offend by the standard of crime assault, what is the statistic for another offense?

Ms. Bishop: For status offenses...

Ms. Yukimura: It is 85?

Ms. Bishop: That is overall, that is again that is just a blending for the same offense and another offense. There are quarters when it varies widely. Your question specifically again?

Ms. Yukimura: Well, if you are tracking your success rate in terms of law violators not re-offending the same crime, but another kind of violation, what is that rate?

Ms. Bishop: It is usually 2-3 percentage points lower.

Ms. Yukimura: So it is still very successful. You mentioned that the success rate is much, much better if they do not go into the Family Court, if diversion is prior to the Family Court system?

Ms. Bishop: Yes, I strongly recommend that.

Ms. Yukimura: So your understanding of the P.O.H.A.K.U program is it is going to take people after Family Court?

Ms. Bishop: I just shared this, it does not say that is going to happen. It looks like what they are saying here is that they, too, are going to refer prior to sending them to Family Court. That apparently, that is what I am reading here. I do not know.

Ms. Yukimura: You said that in the statistics, the young people often offend 10 times before they get their first, before they are arrested?

Ms. Bishop: That is the National.

Ms. Yukimura: And that the Teen Court, Teen Court referrals, or Teen Court used to be funded through the Police at one point?

Ms. Bishop: This money comes to the County and the County decides where it is going to go.

Ms. Yukimura: With the help of the advisory committee?

Ms. Bishop: It is my understanding that the Mayor decides which County office can manage this money. So there may be some OJJDP money that is in KPAL, for example. But in '95 the Police were receiving this money.

Ms. Yukimura: What I am driving at is if diversion is effective, most effective before in the continuum of care, whatever kids go into Family Court, then you want to get them in the first 10 violations, so to speak.

Ms. Bishop: Sure.

Ms. Yukimura: Or activities that are anti-social or delinquent.

Ms. Bishop: Exactly.

Ms. Yukimura: So if the Police Department is the first contact point, I do not know where the first contact point is of these first 10 actions of a young person. But that would be the place to focus on in terms of diversion and the people or the agencies that interact on those 10 would be the place to focus on.

Ms. Bishop: That does call for individuals that are working together with young people to come together before they are arrested. That is definitely true. There are some Youth Courts that operate when the Police pick up a young person before they actually detain them, they run a scan and if the youth is not in that State system, they divert the kid without arresting them. They actually do not detain them, they divert them. So there is all kinds of diversion.

Ms. Yukimura: So actually the diversion could be prior to arrest?

Ms. Bishop: Absolutely. But here that is not the case. And so I wanted to make some comments about the history and say that for...this could be the recommendation here or this particular program, I guess imitation is the sincerest form of flattery. I think that there may be some good bones to this, and I do not know if there are any results or studies any place on how far down the line this type of intervention for kids that have been arrested 3, 4, whatever times.

Ms. Yukimura: Thank you.

Chair Furfaro: Before I recognize you, Mr. Bynum, I am going to make a couple of announcements here, we are at least an hour past what was to be this morning's Special Council Meeting. I wanted to make a couple of announcements to people in the audience. I suspect we may find ourselves addressing a specific time on the solar bill with Vice Chair Yukimura at 1:30 p.m. I also think that this will be the short workshop on the Comprehensive Zoning Ordinance that people might be here for now. I do not suspect we will get there until about 2:00 p.m. I wanted to share that, so you had this time. If that, and that is early, but the reality is this is only a first workshop. I think if some of you are here regarding the zoning density items, that will only be a quick topic today and that I just wanted to share that now, so that everybody knew not to anticipate anything on that until after 2:00 p.m. Okay? Thank you for your patience, and this is my best guesstimate. Thank you. Now Mr. Bynum, you have the floor.

Mr. Bynum: Thank you. Good morning and thank you for coming.

Ms. Bishop: I did just want to say, I just wanted to provide some history and I am glad to answer questions, and again I want to support any diversion programs that are credible for young people.

Mr. Bynum: Fully understood. We will get to this later and we should have probably had this discussion months ago, but it looks to me that some of the services that this grant that you saw this morning and that we saw this morning might be duplicative of Teen Court or what Teen Court can do.

Ms. Bishop: Yes.

Mr. Bynum: And there has been an advisory committee for many years that meets to discuss these kind of programs and they have not met since November of last year, did I hear that correctly?

Ms. Bishop: Yes.

Mr. Bynum: So there was no input from the committee on how these funds were to be distributed? They could have been used for an expansion of Teen Court?

Ms. Bishop: Or anything else.

Mr. Bynum: And so Teen Court, when was the last time Teen Court had a referral from the Prosecutor's Office?

Ms. Bishop: In mid-April of this year.

Mr. Bynum: So you have not received referrals at Teen Court?

Ms. Bishop: No. We were part of the suspension of all referrals for all diversion programs.

Mr. Bynum: In one statement recently, the Prosecutor said she was going to start making referrals again, but you have not received any?

Ms. Bishop: We have not received a referral or we have not received a reapply when we asked about, nor have the other 2 diversion programs.

Mr. Bynum: Thank you.

Chair Furfaro: Are there any more questions for Laverne? If not, thank you very much.

Ms. Bishop: Thank you.

Chair Furfaro: Anyone else wishing to give anymore testimony? If not I would like to call the Prosecutor's Office and Grant Writer for the Prosecutor's Office back up.

JAKE DELAPLANE, FIRST DEPUTY PROSECUTING ATTORNEY: Jake Delaplane, First Deputy Prosecuting Attorney.

JAMIE CHONG, GRANT COORDINATOR: Jamie Chong, Grant Coordinator.

Chair Furfaro: I think, Council Vice Chair Yukimura, did you have some time to formulate your questions? If not, we can take a recess for 10 minutes? If not, you have the floor.

Ms. Yukimura: Thank you. So what are the purpose, goals and objectives of the Keiki P.O.H.A.K.U program?

Mr. Delaplane: If you refer to page 2 of the document that we provided, those first 3 paragraphs go over the scope of the program. Essentially what our office aims to do with this is to provide a culturally-based diversion program for our youth that fall under this sort of gap. We have been calling them "gap offenders," basically, where they do not fall squarely into any of the normal process categories whether it is that is someone that is eligible for Teen Court, or whether it is someone who should go through the normal process as far as having a case actually filed, or a case we should decline prosecution and not prosecute at all. So there are quite a few offenders, juvenile offenders that fall into that category. We have to make a difficult decision between those alternatives and one or more of those may not be available to us. So we are trying to provide an alternative to provide services to these kids who could benefit from a diversion program, but do not, again, necessarily qualify for the only diversion program that we have right now, which is Teen Court.

Ms. Yukimura: How many gap offenders are there?

Mr. Delaplane: If you will refer to the budget on page 4 and 5, again, these are estimates. So what we have done is we have looked at the total number of law violators that we have and we look at the status offenders that we have and we have broken those down by number there. And we also looked at the number of case referrals from KPD and also the number of petitions that we filed in the Juvenile Court and using those statistics, we compiled those together and came up with an estimate of how many kids it looks like would not necessarily qualify for Teen Court, and based on our experience would not...I am sorry, would benefit from diversion. So after, let us see, after the second set of statistics, of the status offenses, it says 1,441 children referrals plead in Juvenile Court in 2011, 178 juvenile

offenders were referred to the Teen Court program, 67 of those completed, 31 refused, and 80 were either incomplete or their status was unknown at the time of the report. So we can only work with the data that we have, and again, it is based on these numbers that we came up with the estimate of how many would qualify for participation, and that number came out to 250 for a one-year term.

Ms. Yukimura: And what criteria are you using to determine that these are gap?

Mr. Delaplane: Again, the criteria that would qualify someone for a gap offender would be their criminal history, because that would be determinant if they are qualified to enter into Teen Court. So we look at their history of past offenses and I know it was previously stated that Teen Court takes second-time offenders, and I can tell you based on experience that is not always true. It may be true in certain circumstances, but it is on a case-by-case basis, but the general rule of thumb is that Teen Court is meant for true first-time offenders. They do not take people twice. So if you are 13 years old and you go out and commit an offense and you get Teen Court, and you come back at 17 years old and commit another offense, even if it is very minor, you are not eligible for Teen Court. Currently we have no other diversion available for someone in that situation; when they were a much younger juvenile they were afforded the opportunity to go through diversion and then years later, they recommitted an offense. So that is one category of offenders that we are looking to serve. Also, offenders that may have had a bad spell of offenses when they were younger, so again at 13, 14 years old, they have a couple of assaults at school, maybe status offenses and things like that, and when you look at their juvenile record it looks bad for a year or 2, and then things got better and evened out. Then later in their high school years they may get into some minor trouble, maybe a fight at school or maybe having some problems with runaway or truancy or something like that. We want to give those types of offenders an opportunity as well. We recognize that in teenager years, 2, 3 years, that can seem like quite a long time. And you are a very different person when you are 13 to when you are 17 years old. So we want to make sure that we have across the board options that are available to help these kids and get them on the right path.

Ms. Yukimura: What is the program methodology that you plan to apply?

Mr. Delaplane: What we are looking at implementing instead of going through the normal process, this was discussed a little earlier, we are going to take offenders who have contact with the Police Department, so they have been detained for a status offense or some sort of crime. When that report is referred over to our office for screening, right now what we are looking at is well do we send them to Teen Court? Do we file a petition with the Juvenile Court, or do we decline prosecution? Those are our 3 options, and what we want to do with this is add another option before charging, so at the screening intake level, does this person fall into this gap where they are not properly serviced by any of the 3 current categories that we have, and allow them to complete diversion programs?

Ms. Yukimura: So I am clear it is a fourth program. I am asking what program are you going to use for this fourth alternative?

Mr. Delaplane: So that is what we are proposing here, and that is what is in our grant application. We have entitled it "the Keiki P.O.H.A.K.U program," it is a culturally-based program and we will be allowing the offender to

complete a culturally-based responsibility class, and also to complete culturally-based community service projects. If they do complete that, then we will issue a decline prosecution letter at that time, and their juvenile history will remain clear.

Ms. Yukimura: Do you plan to then contract with an entity, an organization to provide this cultural program?

Mr. Delaplane: Yes.

Ms. Yukimura: How do you know, how will you know that that contractor's program actually works?

Mr. Delaplane: We will conduct an appropriate review of the applications for anyone that would want to provide services for this. Again, the structure of the program has yet to be hammered out entirely, but again, what we are looking at is whether this types of services, or the types of programs or the types of classes, the type of community service-based initiatives, whether those have been proven in the past to be successful.

I can tell you that I think that probably what you are getting at, because I heard you mention evidence-based and I know that is typically the buzzword for these kind of programs, we are not hiding the fact that this is a new program. This is a new program that we expect to be very successful. Again, this is not something that has been done a lot of other places because you do not have other places like Kaua'i. I mean, this is culturally-based. So it is going to be based on Hawaiian values and the types of community service projects that we have going in our community. When you talk about whether we are going to have this enormous amount of national data that shows that this is something that is going to be successful, we are not going to have that.

Ms. Yukimura: Any program that is really committed to effective action will have an evaluation component to it. I do not see anything in your budget for an evaluation.

Mr. Delaplane: If you will refer back to pages 2 and 3 of the proposal, under Subsections (a) and (b) on page 3, it talks about what the different responsibilities of the Office of the Prosecuting Attorney and the Office of Youth Services would be. If you look at the second to the last bullet point on page 3, one of the responsibilities of the Office of the Prosecuting Attorney would be to prepare biannual reports to OYS telling the progress, data, and updated information regarding the Keiki P.O.H.A.K.U program, also to track and maintain fiscal data, and participate in quarterly meetings. So there is absolutely a data tracking component to this, an evaluation component to this, where we will be tracking recidivism, because again, that is what we are out to do, to eliminate recidivism. We do not want kids coming in and reoffending; we want to get them on the right track.

Ms. Yukimura: I think evaluations, and what kind of data you track, you really need professional help to make it really clear that the evaluations are going to be meaningful. All these grant proposals that I have seen regarding drug prevention, the evaluation component is very important, and I do not really see that. Who is going to really do this work?

Mr. Delaplane: If you will refer to page 3, bullet point no. 3, one of the responsibilities of the Office of the Prosecuting Attorney would be to coordinate and execute any necessary agreements with third-party vendors to assist...

Ms. Yukimura: So are you going to have another position? Who is going to do this in the Prosecutor's Office?

Mr. Delaplane: We have a Program Coordinator that coordinates all of our diversion programs, and that Program Coordinator will be involved in this process. As to the nuts and bolts of exactly how the data is going to be compiled and how the data is going to be tracked, all of those things are yet to be seen as we move forward with developing and implementing the program. I can assure you that that data will be tracked and that we will be tracking both recidivism and for more than one year, because we do recognize that again, when you are dealing with juveniles, that it is important to track it over a very long period of time, even into adulthood. So those are things that we are going to be looking at.

Ms. Yukimura: Your Program Coordinator is an existing position and you will not require a new position in Office of the Prosecuting Attorney.

Mr. Delaplane: Again, I am not going to comment on whether or not we will need positions in the future. We do not know how this will progress. We do not know how many referrals we get. This may be a hugely successful program that we end up handling most of our cases.

Ms. Yukimura: I am talking about this year's grant. This is running for a year, is it not? Is this the timetable?

Mr. Delaplane: It is for this current fiscal year. I believe on the cover it says for this fiscal year.

Ms. Yukimura: For this period of a year, because you need to know what, and we need to know what your positions are, are you planning on using an existing position?

Mr. Delaplane: We are planning on using an existing position for implementation for its first year and I am not going to predict what our needs are for the future. I certainly hope we are successful and maybe we will need additional staff.

Ms. Yukimura: I hope so too, but we are talking about operations right now under the grant that you are requesting.

Mr. Delaplane: Sure. If the question is are we able to implement this and whether our current staffing level is sufficient to do this and implement this program, the answer is absolutely yes.

Ms. Yukimura: So this program has not been vetted to the advisory board and I wonder why that is.

Mr. Delaplane: The original discussions that we had on this were with David Hipp, the Executive Director of the Office of Youth Services, and the discussions that we had surrounded the need to service these gap sort of offenders that are not currently serviced by our current setup. So when we had initial

discussions with him, it was not apparent that part of the moneys that would be under this grant would be the moneys that the County gets through the formula. So we were not informed until recently actually that that would be the case, that some of the money that would be involved in this grant would come from the formula grant. So that portion of the money of the \$35,000.00 that we are requesting from the Office of Youth Services, that will be discussed in front of the advisory committee at its next meeting.

Ms. Yukimura: So is that not to be done before you come before us?

Mr. Delaplane: No. What is before you today is our request to apply, receive, and expend funds from the Office of Youth Services and how those funds are divvied up in the end that may fall with the advisory committee with that portion of the money, but that is for a later discussion.

Ms. Yukimura: But what if the Advisory Council recommends that it be used in another way other than this program?

Mr. Delaplane: Then we would not have the ability to expend that amount of the funds. What we are asking for here is the ability to apply, expend, and receive up to \$35,000.00 from the Office of Youth Services.

Ms. Yukimura: How are you going to have a successful program if you do not have a core piece of the moneys?

Mr. Delaplane: Again, that would be something that we have to discuss with the Advisory Council.

Ms. Yukimura: Well it does not seem right for us to approve anything prior to get some feedback from the Advisory Council. I think that was the intent of Federal legislation that it be coordinated and part of a community-based group that evaluates what the needs are, and how they are addressed by these moneys.

Mr. Delaplane: And again, that would be discussed by the Advisory Council and that is not a function of this body. The function of this body again, and I will defer to the Chair on that as he defined those parameters. It is my understanding that this body is here to review our application for this funding to the Office of Youth Services. Our application includes a request for the entire amount of \$35,000.00. Whether another advisory committee has to look at that later and subsequently approve that, that is a question for another committee and not this body, in my opinion, and again, I defer to the Chair.

Chair Furfaro: Vice Chair, would you yield the floor to me for a second?

Ms. Yukimura: Sure.

Chair Furfaro: I do want to make it very clear that the grant has a requirement that you have this advisory committee intact, and therefore, if that is a requirement of the grant, I would certainly think that the grant application would have been run through that group for its best practices on how it is going to be used before it comes to this Council. And I also want to let you know that I had a conference call with a Mr. David Hipp, but based on a situation that week, I missed

the conference call, and then subsequently talked to his Administrative Assistant, Leimomi Fernandez, who probably requires me to get a better understanding of this grant application; I may have to go to Honolulu. But that aside, I am trying to reach out. The piece that I am struggling with is it is a condition of the grant that you meet with the advisory group pre-application to us would have been preferred, not post. So since you brought up my name at the discretion of the Chair, I thought I might share with what I am thinking right at the moment.

Mr. Delaplane: Sure, and our Grant Coordinator had a conversation with the member of the Office of Youth Services that would probably help to clarify that.

Ms. Chong: Previously when we did apply, or when we did submit our proposal, they did not disclose to us where the funds were going to come up, they did tell us that they had funds available for our County, which is why I submitted our application. I called Ed Chardaloff yesterday to ask him again, can you please indicate to me where this funding is going to come from for our proposal, which yesterday morning is when he indicated to me that part of it was going to be from formula grants, and the other part would have been from the State portion.

Chair Furfaro: Well, I appreciate that information but since you brought it up, I want you to let you know where my thinking is. On my own initiative I have tried to make a call to Mr. Hipp. Due to an emergency with our realm of business as it relates to elections, I missed the call, and I have to probably reschedule that. That is where I am at. Vice Chair, thank you for yielding the floor to me.

Ms. Yukimura: Thank you. How much is coming from the formula funding and how much is the State portion?

Ms. Chong: The formula funding is \$18,694.00.

Ms. Yukimura: About half?

Ms. Chong: Yes.

Ms. Yukimura: And the State moneys are in discretion of the Office of Youth Services, is that what it is?

Ms. Chong: I believe so.

Ms. Yukimura: And there are no requirements for those moneys? Okay. I think, are there any County moneys required for the match?

Ms. Chong: I believe it is 10%. So probably it would be, I am thinking around \$1,800.00.

Ms. Yukimura: So you have that in the County budget?

Ms. Chong: Yes.

Ms. Yukimura: Let us see, wait, \$1,800.00 for the County formula funding?

Ms. Chong: Just the formula, yes.

Ms. Yukimura: There is no other match requirements?

Ms. Chong: I do not believe so. I would have to check again.

Ms. Yukimura: Could you?

Ms. Chong: I could check. Yes.

Ms. Yukimura: Thank you. Okay. That is it for now. Other questions? Councilmember Bynum?

Mr. Bynum: This agenda item is permission to apply, receive and expend, correct?

Mr. Delaplane: Yes.

Mr. Bynum: But you have already applied, is that correct?

Mr. Delaplane: Yes.

Mr. Bynum: What happened?

Mr. Delaplane: I believe, and because a lot of grants come through this body, grants, when they come before you the agenda item is always to apply, expend, and receive funds under the grants. I watch a lot of Council meetings and I have actually never seen that question come up about whether you have already applied for this grant or not. I know that in most circumstances, and we are in the practices too as is every other County Department, you apply for grant funding and come to this body simultaneously. I am sure you know as well from your years on the Council that when grants come up, they have specific deadlines that you have to meet. So if you have to wait for an agenda item to come to this body to say can we even apply for this grant, then time may be lost and you may end up missing the opportunity completely. So it is an agenda item to apply, expend, and receive, and, yes, apply is on there and that is part of what we are doing now is applying; this is part of the application process. Coming before you is part of the application process, sending the request over to the OYS is also part of the application process; we are following the process that we do like any other grant that we do. It is no different and it is no different from the practice of any other Department in the County.

Mr. Bynum: Mr. Delaplane, this whole discussion should have happened months ago, so we could do our due diligence and understand how this fits with other diversion programs. You know, do the rules apply to the Office of the Prosecuting Attorney?

Mr. Delaplane: To clarify, we had met with the Finance Director on multiple times on this. We had this specific discussion about whether we needed to come to the Council before we even had the discussions with the Finance Director, and from Wally Rezentes himself, he said that there is no need to go to the Council at this point. We have been in complete contact with the Finance Department all the way through this process. The County Attorneys have been notified all the way through this process of how we were proceeding. So again, we have had contact with all of the appropriate parties in this and we followed the procedures that we have

always followed, and we followed the procedures that every other County Department follows.

Mr. Bynum: Do you need to come to the Council prior to applying? Does that rule apply to your Department?

Mr. Delaplane: Again, I posed that question to the Director of Finance and he told me that was not required.

Mr. Bynum: I have asked Finance to be here and it is okay that you have already applied, and that you have already received prior to this. That is okay with you?

Mr. Delaplane: We did not receive funding.

Mr. Bynum: Okay. So last year you applied for a new (inaudible) grant. Did you apply for that grant before you got permission from the Council?

Mr. Delaplane: I see this as a pattern with you today, Mr. Bynum, that is not at all on the agenda and I am not going to be discussing other matters on the agenda. There are procedures in place and we have agenda rules that are in place and I am not going to be a part of violating the Sunshine Law and talking about items that are not on the agenda. So I will not be talking about a new (inaudible) grant, nor will I be talking about any grant other than the grant before the Council today.

Mr. Bynum: So it is your testimony that the Office of the Prosecuting Attorney does not have to get permission from the Council to apply for a grant?

Mr. Delaplane: I am not going to allow you to characterize what my statement is...

Mr. Bynum: I am asking.

Mr. Delaplane: My statement is on the Juvenile Accountability Block Grant that is before you today, that is on the agenda today, we spoke with the Finance Director Wally Rezentes about this issue of applying for and receiving, not receiving, but apply, receive and expend funds and whether the application had to be held up before coming to Council and the answer was no, and that we may proceed and so we proceeded under the direction of the Department of Finance.

Mr. Bynum: So the advisory committee has not met since last November, is that correct?

Mr. Delaplane: I assume that is true. I do not have those facts in front of me, did I hear that from the speaker.

Mr. Bynum: Mr. Delaplane, not only have I been on the Council for five years, but prior to that I worked for a non-profit so I know these kinds of grant processes. I know how it works. Would it not have been appropriate to discuss this with the advisory committee prior to putting this...

Mr. Delaplane: Again as our grant coordinator Jamie Chong said, we were not aware that part of the moneys under this grant would come from that formula grant, and certainly we could have discussed that, but again, I do not think it is any sort of violation of procedure or even improper at all that we have come to the Council with this request for \$35,000.00 from the Office of Youth Services. Even if a piece of that is coming from the formula grant that is going—and I can assure you we will have those discussions and obviously we have to have those discussions with the Advisory Council before we can receive or expend under this grant. So that is the actual process that has to go through on the Office of Youth Services side, but we are fulfilling our County obligations to come before this body and submit our request to apply, receive and expend funds just like we do with every single other grant we apply for and just like every other department does for every grant that they apply for. I can think on many other examples of this but generally the way grants work is there are requirements on the expenditure of funds and also the approval and amounts of funds. The amount that you come before this body and ask for may not necessarily be the amount that you get in the end from the agency that you are applying to. Again, to characterize this as a deviation from normal process is just misleading, because this is exactly how the process works under, again, all of our grants and all of the grants that everybody else applies for.

Mr. Bynum: I hear a lot of words and I do not hear an answer, but I will respectfully agree with you that is a deviation from standard of practice. What our proviso is says, "All applications by any department for new grants or any outside source shall be submitted to the Council for approval." This was not submitted to the Council for approval.

Mr. Delaplane: It was and it is on the agenda today.

Mr. Bynum: But you have already applied. You already applied for the grant?

Mr. Delaplane: We are in the application process.

Mr. Bynum: So how is that our long-term—I think Hale 'Ōpio has been doing this for a long time and they were not aware of it and did not have an opportunity to apply. How is that when you have a collaborative effort going on?

Mr. Delaplane: I am not sure I understand the question of why Hale 'Ōpio would be involved in a grant application from the Office of the Prosecuting Attorney to implement a new program?

Mr. Bynum: I will try to get answers from the Finance Department, because it is pretty clear I am not going to get a clear answer from you. What I understand you saying is that regardless of standards of practice here for years, regardless of what our proviso says, it is okay for you to apply for a grant prior to getting the application, even though the agenda—prior to getting Council approval even though the agenda item says, "Permission to Apply." You have applied, correct?

Mr. Delaplane: Let me make this very clear, we are following the standards of practice that we have always followed in this County. We are following the standards of practice that every other department follows in this County. This is not a deviation from anything. I believe that you know that and I

think it is disingenuous that you are couching this in terms that make it seem like we are deviating from process. We are also following the same process that we have always followed and we are also following the direct advice from the Finance Director, Wally Rezentes. So again, no deviation from process. We are following through from what we have been told from.

Mr. Bynum: What is the word "disingenuous" mean, Mr. Delaplane?

Mr. Delaplane: Again, I am not going to get into a back and forth with you, Mr. Bynum. I think that is inappropriate.

Mr. Bynum: We are in a back and forth and in my opinion it is a deviation, clearly. This is not the first time and this is not the way we do business around here. I have been involved in non-profits and involved in the County and we will hear from Mr. Rezentes and his department about whether you have accurately portrayed his comments to you. I think it is pretty clear to this Council that we have an expectation that new grants will be brought before this body before they are applied for, so we can have the dialogue we are having. We have testimony from people that I respect that says these may be duplicative, you know? That the Hale 'Opio was unaware that this grant happened when they have been involved for many years in the Advisory Committees that are no longer meeting. Those are causes for concern. We have the same agenda here, which is serving the community well. That I am sure we can agree on, but I do not appreciate you characterizing my comments as "disingenuous," we all know what that means. If you do not want an argument, then answer the questions. You said you do not think you have to abide by this provision. I heard this.

Mr. Delaplane: Again, you are mischaracterizing what I stated and probably I misstated this, because again, I do believe that your comments were disingenuous and misleading. But I stated that they came directly from Wally Rezentes, the Finance Director, and it was actually Ernie Barreira.

Chair Furfaro: We are going to leave it at that. We heard the same question three times and we have heard the same answer three times. We will get Mr. Barreira up to answer that question. But without passing the buck, I want to make sure for everyone and all departments, the Council restrict certain provisions in the budget. These provisos are intended to give direction on procedures for the budget. The proviso that we put in this year talks about approval from the application step. Now if you have gotten different information from Finance or from procurement, then we will discuss that with them. That proviso that Mr. Bynum referred to starts with the term application. On that note, since we addressed that question several times, I am going to recognize Mr. Rapozo.

Mr. Rapozo: Thank you, I want to clarify it was about six times that you answered the same question that you got your direction from the Finance Department. I just got to say I have never seen this much scrutiny on any grant application on a small grant like this. I have just never seen. I can tell you from personal knowledge, there has been numerous grant applications that come up to that mic that had already been applied for and no mention was ever made. No serious criticism was ever made. I just want to get that on the record. My question, this Advisory Council process, is that a mandate of the grant? Is that a mandate of State law? I heard from Lavern that whatever guideline is being used requires the State to put together an advisory group and I am assuming that the State has that.

Mr. Delaplane: Yes.

Mr. Rapozo: And what do they do? Do they look at this program? Do they look at and say yes, it is okay?

Mr. Delaplane: They would consider the program and again, they would look at the funding that is available and again, Jamie Chong read to you the funding amounts and they would basically thumbs up or thumbs down, whether that money would indeed be allocated for that purpose.

Mr. Rapozo: As far as the County's advisory group is that a mandate as well? Maybe Jamie you can answer that?

Ms. Chong: Yes, we do have an advisory.

Mr. Rapozo: Where is the mandate that the County advisory group meet and agree on any new program that any department wants to implement?

Ms. Chong: I would have to look into that. I am not too sure.

Mr. Rapozo: Are you aware of that though?

Ms. Chong: We have always had an Advisory Committee that met, I would say that we tried to meet quarterly. Sometimes it does not happen. It just depends. When the funding becomes available, the formula funding becomes available, we discuss it at those meetings and a vote is taken on what program it should go to. Typically there has not been any other program other than Teen Court that has been brought to the Advisory Committee that I can recall.

Mr. Rapozo: So the plan of your office is to convene—who...where does that sit? Does it reside in the Prosecuting Attorney's Office?

Ms. Chong: It does and we all meet there.

Mr. Rapozo: So your intention is once the grant request is approved, then you will send it to the Advisory Committee?

Ms. Chong: Right. Like I said earlier, we were not aware that the funding would be coming from the formula, which indicates that the Advisory Committee approves of it. We were under the impression from O.Y.S. that the funding was going to be completely State funding until I got the phone call yesterday to verify exactly where was this funding coming from, but we do plan, since the funding now—we are aware it is going to be coming from the formula, and that that portion has to be approved by the committee. We do plan on meeting with the committee and presenting the Keiki P.O.H.A.K.U program.

Mr. Delaplane: Just as a clarification for that, there is no mandate it has to be approved by this committee before we apply for it. And again that is not a condition precedent for us asking the Office of Youth Services for the money, but it is a condition precedent for us actually expending the money and going out there and actually writing the check or doing the purchase order for whatever services might be needed under this program.

Chair Furfaro: On that note, I have an urgent request from the videographer to take a break and we will take ten minutes right now.

There being no objection, the meeting recessed at 11:17 a.m.

The meeting was reconvened at 11:37 a.m., and proceeded as follows:

There being no objections, the rules were suspended.

Chair Furfaro: Okay, we are back from our recess. I have a housekeeping item to share with you. I do have from Councilmember Chang a notice that he will be leaving today. He needs to get back to Honolulu and get together with his family and his mom on some matters. So Mr. Chang, so noted your departure and we wish the very best for your mom and her continued recovery. On that note, Mr. Rapozo and Councilmember Nakamura.

Mr. Rapozo: I am done, Mr. Chair.

Chair Furfaro: Okay. Councilmember Nakamura.

Ms. Nakamura: I have a question for the Prosecutor's office.

Chair Furfaro: Certainly.

Mr. Delaplane: Jake Delaplane, First Deputy Prosecuting Attorney.

Ms. Chong: Jamie Chong, Grant Coordinator.

Ms. Nakamura: I have one question. This is just a follow-up to LaVerne Bishop's comments. Has there been any communication or discussion with the Teen Court program about possibly expanding the scope of their program to accommodate some of the gap offenders?

Mr. Delaplane: Teen Court, again it follows a model and LaVerne discussed this earlier. It follows a national model on how it is implemented and quite frankly I agree with the way it is set up currently. And there is a need for a diversion program for true first-time offenders and status offenders and things like that. This program is not any way to take away from Teen Court, but just to service offenders that do not squarely fall into that category. Even offenders who may have gone through Teen Court already and whatever they learned there did not stick with them properly or things like that. It is a different approach and because it is a different approach it is something that we want to try a culturally-based program that is based on Hawaiian values and our local cultural community service projects that are already going on out there, getting them involved in the community.

Ms. Nakamura: Are you saying that Teen Court could not be expanded in any way or the model revised to include this group?

Mr. Delaplane: It probably could and I think again they follow a national model. Think of their requirements and all of that, but again, what we are looking at here is not a Teen Court program. It is not—we are not looking for a different type of Teen Court. This is not Teen Court at all. This is culturally-based

diversion and based on Hawaiian values class and cultural-based community service projects, which is very different, but also valid as a way of diverting these cases from the normal system.

Ms. Nakamura: So of the 2011 statistics on page 4 of your report, there are approximately 1,400 children referrals from the Fifth Circuit Court. Is that accurate?

Mr. Delaplane: Yes.

Ms. Nakamura: Of those, there is a breakdown in categories.

Mr. Delaplane: Yes.

Ms. Nakamura: What categories would go where? Which ones get—right now do all of them get referred to Teen Court?

Mr. Delaplane: Status offenses, while it is correct and it was correctly stated that status offenses are in the M.O.U. that is in place between the Office of Prosecuting Attorney and Teen Court. Because of funding issues, at least that is what was communicated to me, they were not, of at least a few months ago, accepting status offenses into Teen Court. That would be one category that currently would not be accepted into Teen Court based on my understanding of the current set up. All other offenses if they are true first-time offenders and they are not Class A Felony violators, they would be eligible to apply for Teen Court, but they are not always accepted. Again that could be based on criminal history or it could be just the level and nature of the offense, whether they would be someone that would likely benefit from the services of Teen Court and whether they would be an appropriate candidate for that.

Ms. Nakamura: What percentage of these of the 1,400 do you think would go to this new Keiki P.O.H.A.K.U program?

Mr. Delaplane: Based on the statistics and I go over the estimates on how we came up with that, 250 juveniles would be qualified to participate in the Keiki P.O.H.A.K.U program and again, some of those would overlap with Teen Court. So I am not saying that there would be necessarily—I guess what I am trying to say, we are not taking away opportunities from Teen Court. We are adding in another option. Again, that is what I tried to explain in that second paragraph on the first page that we are adding a fourth option to the three that we already have in place.

Ms. Nakamura: Thank you very much.

Chair Furfaro: Vice-Chair Yukimura?

Ms. Yukimura: So are you planning to get a local provider?

Mr. Delaplane: Again, we are going through the process with Ernie Barreira on procuring professional services for this program.

Ms. Yukimura: When you are working on a program, you need to know what resources are available in the community and what you want. If you

know what you want, are you thinking that—I mean have you been working with anybody on developing a program?

Mr. Delaplane: As part of the application process that we went there to and the exempt posting that expired on August 8, that is one of the criteria that we asked for from people submitting applications to provide vendor services under this program.

Ms. Yukimura: So you are already engaged in procurement before you even have approval to apply?

Mr. Delaplane: Yes.

Ms. Yukimura: How do you justify that?

Mr. Delaplane: Under the direction of Ernie Barreira, that is the course that we took.

Ms. Yukimura: What happens if we do not approve it?

Chair Furfaro: Excuse me, before we go any further here, I have asked Ernie Barreira to be here and we have had that question raised several times and I hope we could have it directed to Ernie as the proviso is applied to all departments. If you could hold that question for Mr. Barreira.

Ms. Yukimura: You plan to have a community service element in it?

Mr. Delaplane: Yes.

Ms. Yukimura: I understand that in the prior P.O.H.A.K.U. project, community service requirements were being waived. So what is the meaning of community service—I mean you touted it as part of a program requirement and then having it waived?

Mr. Delaplane: I guess I do not understand your question.

Ms. Yukimura: I understand that community service requirements in the prior P.O.H.A.K.U. project were being waived. Is that not true?

Mr. Delaplane: I will not be answering questions that are not on the posted agenda.

Ms. Yukimura: I am sorry, but you are proposing community service here. This is a relevant question to find out what past practice is and if you are continuing to that past practice?

Mr. Delaplane: This is procedural. I am happy to answer questions.

Ms. Yukimura: This is totally relevant and there is already an O.I.P. opinion that it is, and Jake, if you are anywhere collaborative and respectful of this process, you will answer that question.

Mr. Delaplane: I would appreciate the same sort of collaboration and respect from you in allowing me to answer your question before interrupting me. Thank you. We are going to implement a community service element as part of the Keiki P.O.H.A.K.U. Program. That is an essential element of the program. It is part of the diversion process, rehabilitation and reintegration process in order to allow the offender to become more connected to the community and have a stake in the community, so that they do not re-offend. So it is an essential part of the Keiki P.O.H.A.K.U program that we intend to implement.

Ms. Yukimura: And in past practice, that community service requirement has been waived, has it not?

Mr. Delaplane: Again, I am not going to be answering questions that involve items that are not on today's agenda. I will not be part of that.

Chair Furfaro: We will send it over as a new question, Jake. The questions that I stated earlier, it will come through my office, if I can ask Vice-Chair Yukimura to frame it and we will expect a response on the new item.

Mr. Delaplane: Thank you.

Ms. Yukimura: Jake, that is a totally unacceptable answer because we ask department heads about their past practices so that we can understand what the commitments are for the future practices. This is totally relevant. It is hiding behind procedural and technical issues if you will not answer it.

Mr. Delaplane: I have entertained and I have retained a certain bit of composure with the attacks that both you and Councilmember Bynum are throwing out with this.

Chair Furfaro: I will say to everyone here, this question is going to come over to you and will be part of a new item. There are rules in this Council. There are very old rules that deal with not taking any personal charge on either side. So let us start with cultural values and let us live aloha and work with kōkua. That is a very important value, okay? So your comments are so noted, Vice-Chair Yukimura, that question will go over in written form.

Mr. Delaplane: Again, in response to your comment, this idea of saying, "We are going to stay on the agenda item and I will be answering questions that are related to this agenda item," that is based on the Sunshine Law and you know that as a Councilmember. But you are accusing me of hiding behind the agenda item when in actuality, you and the other Councilmembers have been hiding behind the agenda item in order to jump out and create some sort of attack based on things that are not even on the agenda.

Chair Furfaro: I am going to relieve you from the stand. You have gotten three warnings from me. That is not what this body is discussing. And if you want to check on that, I would make sure that any member or individual who speaks to this body, we do it in such a way that questions are open for discussion, but I want no personalities involved. Okay? If it comes up again, Jake, I am going to ask you to leave the stand.

Mr. Delaplane: Thank you, Jay and again, I apologize, but I feel that because the charges are being thrown this way, that I have to at least respond.

Chair Furfaro: Your point is noted and we will leave it at that, and members, the same warning goes for you. Mr. Rapozo?

Mr. Rapozo: If you could yield, I have one question as it relates to her question.

Ms. Yukimura: I would like to have the County Attorney, please.

Mr. Castillo: Al Castillo, County Attorney.

Ms. Yukimura: Is my question a violation of the Sunshine Law?

Mr. Castillo: Your questions are relevant to the point where--and again, the decision-making on that, though it may have been objected to by the previous speaker here, is controlled by the Chair.

Ms. Yukimura: That is not my question.

Mr. Castillo: In terms of relevance, it was relevant.

Ms. Yukimura: Thank you.

Mr. Castillo: You are welcome.

Chair Furfaro: And now, Mr. Rapozo. Thank you for yielding the floor, Vice-Chair Yukimura. Mr. Rapozo, you have the floor.

Mr. Rapozo: I need them back, Sir.

Chair Furfaro: They are coming back.

Mr. Rapozo: I have one simple question. I was hoping we could get these done before lunch. Really simple, are you planning to waive the community service component of the Keiki P.O.H.A.K.U?

Mr. Delaplane: No.

Mr. Rapozo: Thank you. That was simple.

Chair Furfaro: We have no more questions for you.

Ms. Yukimura: I have one more question.

Chair Furfaro: You do have one more question? Members, I want to ask you to be as prepared as you can. Please come up again for the posed questions that you would like, and I have had similar questions repeatedly asked in different forms. Please follow some parameters about new questions. Vice-Chair, you have the floor.

Ms. Yukimura: Thank you. So if diversion is so important and so critical, and Teen Court has been providing some of that, why have referrals to the Teen Court stopped?

Mr. Delaplane: Again, we made that clear and at prior Council Meetings and also in multiple press releases from the County, so I do not think that is something that necessarily needs to be discussed on this agenda item for this grant application.

Ms. Yukiumra: You said that among the different ways to divert, Teen Court is one of the diversion pieces. I am concerned that there may be a dissatisfaction with Teen Court that it is not effective and that you would be diverting all to this new program. There are different tracks of this overall—you are trying to close the gap. The question is why are you not sending it to Teen Court right now; the Teen Court referrals when there are kids at risk.

Mr. Delaplane: Your question is probably too complicated and could you frame it in a different way because you are melding two issues that are not relating.

Ms. Yukimura: I am trying to understand how you are going to have this system working when you are not making referrals to Teen Court.

Mr. Delaplane: We plan on making referrals to Teen Court. We do not plan on stopping making referrals to Teen Court.

Ms. Yukimura: You have, in fact, stopped now.

Mr. Delaplane: That is a separate issue.

Ms. Yukimura: There is another reason that you have stopped?

Mr. Delaplane: Again, it is very frustrating that we keep going to issues that are not related to the grant application that is before the Council today.

Ms. Yukimura: I am trying to understand how you see Teen Court working and the diversion program working?

Mr. Delaplane: And I have explained that.

Chair Furfaro: Excuse me, Vice-Chair Yukimura. Can you provide to this body the press releases that answer those questions as soon as possible, if you have press releases that did so?

Mr. Delaplane: I absolutely can, but it does seem that Vice-Chair Yukimura is asking me two separate questions. One is about why did referrals stop to all diversion programs and the other one is how do I see Teen Court and the Keiki P.O.H.A.K.U Program operating simultaneously within our current framework. I can answer that second question. I do not believe the first question is related to the item today.

Chair Furfaro: Any question that the Council asks regarding a program we would like to be informed. So provide to us those press release items and secondly, we will pose Vice-Chair Yukimura's questions in written form.

Mr. Delaplane: We will provide those. Thank you.

Ms. Yukimura: Just for the record, I have read press releases and I have not seen any answers to my question. If they are in press releases, why can't you just say them here?

Chair Furfaro: Well I do not expect him to wander through his business day knowing word-for-word the narrative that they put in the press release, but please provide it to us again and watch for Council Vice-Chair Yukimura's question coming over in written form. Mr. Rapozo?

Mr. Rapozo: Jake, I am reading page 5 of your narrative that we received. And let me make sure that I understand this clearly. Teen Court is not going to be stopped. That is what I am reading.

Mr. Delaplane: That is correct.

Mr. Rapozo: That, in fact, this program, the Keiki P.O.H.A.K.U. Program, will fill up the gap that basically Teen Court currently accepts true first-time low-offense juvenile offenders and do not accept status offenders of any kind. So basically, that group of offenders will be sent to Keiki P.O.H.A.K.U.?

Mr. Delaplane: Yes.

Mr. Rapozo: That is exactly what this says on page 5.

Mr. Delaplane: Yes.

Mr. Rapozo: Is that the intent? I am assuming that is the intent because that is what you submitted.

Mr. Delaplane: To service gap offenders so they do not fall into one of the categories currently available, one of which is Teen Court.

Mr. Rapozo: Right. Earlier I know LaVerne talked about sometimes the Prosecutor's Office will refer a second-time or third-time offender, but as I understood Teen Court, and I actually—not very intimate with it, but somewhat familiar. If a offender is a second-time offender, but was already in the Teen Court program they would basically be able to participate in a Teen Court program?

Mr. Delaplane: If they have already completed Teen Court, they cannot.

Mr. Rapozo: They are done, right?

Mr. Delaplane: You only get one bite at the apple.

Mr. Rapozo: That would fall into the Keiki P.O.H.A.K.U.?

Mr. Delplane: Yes.

Mr. Rapozo: Under the discretion of your office felt that the Keiki P.O.H.A.K.U. Program would be of benefit to that child who would be sent down that path?

Mr. Delaplane: Yes.

Mr. Rapozo: So it is really just one more opportunity, one more tool to help our keiki that get in trouble and we want to divert them from the judicial system?

Mr. Delaplane: Yes.

Mr. Rapozo: Thank you.

Chair Furfaro: Thank you, Jake. I am going to ask Ernie Barreira to come up. Did have you more questions?

Mr. Bynum: No, only questions for Ernie.

ERNEST BARREIRA, JR., Director of Budget and Purchasing: Good morning, Chair Furfaro, Vice-Chair Yukimura, members of Council. Ernie Barreira, Budget and Purchasing Director.

Chair Furfaro: The draft component for professional services for Keiki P.O.H.A.K.U., you have reviewed?

Mr. Barreira: Yes, I have.

Chair Furfaro: Okay. It would be Finance's overview should we enter into any agreement that the contract would also be reviewed prior to issuance of a vendor by the County Attorney?

Mr. Barreira: Yes, the contracts all—every department of the County must seek County Attorney approval for the legal content of every contract before we fully execute.

Chair Furfaro: I want to make sure that we understand that we are on this track.

Mr. Barreira: Yes, Sir.

Chair Furfaro: A review of the notice, it is specifications, reviewed by procurement, and a review of the potential issued contract once a vendor is selected, goes to the County Attorney.

Mr. Barreira: Chair, just to clarify, when you make reference to review of the draft, are you making reference of the grant application or the procurement documents?

Chair Furfaro: Both.

Mr. Barreira: The grant application I have not seen before today. That is not normally a process that we exercise in the Division of Purchasing.

Chair Furfaro: You do review it?

Mr. Barreira: I review the procurement documents prior to their posting to ensure legal compliance.

Chair Furfaro: Okay.

Mr. Barreira: Yes, Sir.

Chair Furfaro: Mr. Bynum, you have the floor.

Mr. Bynum: I want to be careful not to mischaracterize anything, but what I heard that Mr. Delaplane say repeatedly is that Mr. Barrera said they did not have to follow those provisos that is in the law? Is that accurate?

Mr. Barreira: I did hear that statement and I have had a number of discussions and meetings with the Prosecutor's Office in terms of the Keiki P.O.H.A.K.U. discussions. Normally I do not have discussions in terms of the grant, because when a department comes to me to seek a procurement activity, I assume that funds are in hand so that we can successfully carry out that procurement. It would also be odd to be asked a question that is contained within the law in terms of the budget proviso. I cannot recall having specifically said there is no need to seek Council approval. I do not remember that being the nature of discussions. Mr. Delaplane is insistent that I did. I simply do not recall that was the nature of our discussion. We discussed many things. I simply do not recall having made that specific reference. I was well aware that the O.Y.S. would be the source of funds for Keiki P.O.H.A.K.U. I was aware that there had been no formal application because it was still pending our decision to move forward with an acceptable procurement process, but I do not have any specific recollection in terms of a need not to seek Council involvement in terms of a grant. That is well within the County proviso.

Mr. Bynum: Can I ask a question of the County Attorney?

Chair Furfaro: Sure, you can step down for a moment.

Mr. Castillo: Good afternoon, Al Castillo, County Attorney.

Mr. Bynum: Section 13 of the Budget Ordinance, it says "New grants from Federal, State, or any outside source shall be submitted to Council for approval." That provision applies to this new grant?

Mr. Castillo: Yes, it does and we have a lengthy history with Councilmember Rapozo and this Council on what "shall" means. I do not have to go in to that.

Mr. Bynum: You never advised the Office of the Prosecuting Attorney that they did not have to abide by this?

Mr. Castillo: Not at all.

Mr. Bynum: So if they moved forward with a grant application prior to getting the blessing of the Council, that would be contrary to this provision?

Mr. Castillo: It says what it says and they did what they did. It is not in compliance with that proviso.

Mr. Bynum: You never advised them that they did not have to do that?

- Mr. Castillo: No.
- Mr. Bynum: Thank you.
- Mr. Castillo: You are welcome.
- Chair Furfaro: Any other questions for the County Attorney?
- Mr. Rapozo: I do not have the language, I just asked the staff to bring the language, but does it state "prior to application?"
- Mr. Castillo: It states all applications by any department or agency of the County for new grants from the Federal or State Government or any outside source shall be submitted to the Council for approval.
- Mr. Rapozo: Okay and is that not what was done? Really, does it say prior to application?
- Mr. Castillo: Well, it says, "Shall be for approval."
- Mr. Rapozo: And it is here for approval.
- Mr. Castillo: I am not going to argue with you.
- Mr. Rapozo: I just want to say and I am not going to throw anybody under the bus today, but I know I sat here with other grant applications that had been applied for and came here subsequently that had been signed as to legality and form. I am just saying, Mr. Castillo, as I read this, what part of this section in your opinion, because you said it is not in compliance, is not in compliance?
- Mr. Castillo: Basically, when you go in for a grant, it says you shall get approval. Whether or not how this body handles it is how this body handles it.
- Mr. Rapozo: That is not my question, Al. I am asking you, what part of this section is not being complied with?
- Mr. Castillo: They have already applied for the grant without coming to the Council before approval.
- Mr. Rapozo: I do not understand. What part of this section is not being in compliance?
- Mr. Castillo: It says they shall come before this body for approval and they have not, because they have already applied according to the testimony.
- Mr. Rapozo: Right. It says, "All applications of any department or agency of the County for new grants from the Federal or State Government or any outside source shall be submitted to Council for approval."
- Mr. Castillo: Yes.

Mr. Rapozo: That is what is being submitted to the Council for approval.

Mr. Castillo: Yes.

Mr. Rapozo: No expenditure of grant funds, no expenditure of grant funds shall be made without written approval from the Council and the accounting being first established. I think they are well in compliance.

Mr. Castillo: Okay, that is your opinion.

Mr. Rapozo: That is what it says. If it said, "Application shall not be made until prior Council approval."

Mr. Castillo: I know what it says and does not say.

Mr. Rapozo: They are in perfect compliance. They are here and applying for a grant as what section 14 says and yet, the inference is made that they are in violation of the budget. I think that is a stretch, but that is my opinion.

Mr. Castillo: Yes, and what the intent of that legislation that was passed by this body, the Council would like to know what the departments are putting the County on the hook, on the financial hook for. So it makes sense to have it done, to have Council approval.

Mr. Rapozo: I can appreciate that response because I myself sit on this Council and I know the legislative intent of that when we got it. But at the end of the day, I just hope that we are not going to go after every single department because Section 14 could be inferred.

Mr. Castillo: That is where this—right now, the question before me is whether or not on this particular agenda item, and statements about other departments—it is almost like—and you know, we are in Court on a speeding citation, when there is not a defense and you say how come only I was stopped? For me like now the question was—the question is really is it in compliance with that proviso? And I cannot say that it is.

Mr. Rapozo: Can you say that it is not?

Mr. Castillo: You should get—out of caution and prudence, you should get Council approval.

Mr. Rapozo: That is what they are here to do today.

Mr. Castillo: It is up to all of you.

Chair Furfaro: Vice-Chair Yukimura.

Ms. Yukimura: Is it appropriate to start procurement before there is approval of application for moneys and no assurance that there are moneys?

Mr. Castillo: Well, whether or not they jumped the gun in this process is not for me to decide.

Ms. Yukimura: I mean, how can we even advertise, make people respond when we do not even know if there is going to be money for it? What about all the time and effort to do this and then if no approval comes, what kind of Government efficiency is that?

Mr. Castillo: I can appreciate your concerns.

Ms. Yukimura: So this whole process that has proceeded is illegal?

Mr. Castillo: I cannot say it is illegal, the entire process.

Ms. Yukimura: Well, would you look into it, please?

Mr. Castillo: Okay.

Ms. Yukimura: Thank you.

Chair Furfaro: Any more questions of the County Attorney? If not, Ernie, could you come back? I think Mr. Bynum has the floor.

Mr. Bynum: Thank you, Ernie. Can you just explain the process of—once it gets to—I understand your answers saying, “Hey, it is not your role to determine whether the application was submitted properly.” It is your role that once the funds are made available to procure them properly. Is that correct?

Mr. Barreira: That is correct, Sir.

Mr. Bynum: Can you just explain briefly what that process is because I am really concerned that providers, you know, who would be clearly people who have experience and long history in our community were unaware of this. It might technically get posted, but there is some kind of breakdown in communication when key providers are not even aware. If you could just explain that process.

Mr. Barreira: Very good, Sir, and I am assuming that the question is directed at whether in terms of the competitive requirement of the code, if there was an opportunity for competition to exist. That is part of the concern. So I can formulate my response appropriately. Thank you, sir. The request for exemption, the notice of exemption as required by law, and forgive me, I will try to avoid the pain of the procurement code as I give you as much information as you need and will follow-up with a written response or training session, if Council would so wish, later on. There are two types of exemptions under the law and under the rules. One type exempts competition. There is a requirement to establish that by the finance director. The second exempts a process. In the case of the Prosecuting Attorney, we are exempting a process. The diversionary program resources that are being sought by the Prosecuting Attorney are not services defined as an acceptable and standard professional service as would be an engineer or psychologist, or a consultant of some kind. But the process was deemed appropriate by the Prosecutor and I approved that process to utilize professional services because it invites the submission of resumes by the public in general and by firms based on the advertisement that was posted and it gives the Prosecutor or any department an opportunity to conduct an evaluation of the strength of the resume, and thereby decide which agency or department or firm is in the best

position to provide that needed service. After which time they transmit a recommendation of award and based on the strength of recommendation of award we at the Division of Purchasing confirm that it conforms to the procurement requirements and either approve the recommendation of award or refer it back. In the case of a professional service, that recommendation of award must be approved by the Director of Finance. I do not have delegated authority. The exemption posts for one week to provide members of public an opportunity to object if they feel it is not appropriate or if some element of procurement is not acceptable. This was done. I approved the procurement, the exempt procurement posted on July 12 and signed an acknowledgment there were no objections on July 20 and after which time we proceeded with the posting for Notice of Professional Services Resume advertisement, which closed on August 8 of this past year.

Mr. Bynum: Once that determination is made, then the public notice is through a legal notice in the newspaper?

Mr. Barreira: The notice for request for exemption is the actual exemption in its entirety as posted on the Division of Purchasing website. That it meets the requirements under the State Procurement Code and in addition the ad, which solicited the professional services are also posted on the website. In this case, there is some discretion allowed the Division of Purchasing as to how long, because the O.P.A. conveyed there was some urgency in having this matter pursued as quickly as possible. I allowed a two-week posting for this particular solicitation.

Mr. Bynum: There is no legal notice in the newspaper. There is a posting on the website.

Mr. Barreira: Yes.

Mr. Bynum: I am sorry, so there is no legal notice in the newspaper?

Mr. Barreira: Right, that is correct. It is posted on the website pursuant to law.

Mr. Bynum: In essence, a provider would have to be checking your website?

Mr. Barreira: Yes, that is why two years ago when we rolled this initiative out, we expended quite a bit of time on a public education campaign to make our vendors and providers aware that we are going paperless and the procurement system would be letting bids on the electronic procurement system on the website.

Mr. Bynum: So there is this issue about the source of funding and requirement for the advisory committee to be consulted. Do you have any knowledge of that?

Mr. Barreira: I cannot speak to the advisory committee responsibility. I am not familiar with that process. I can tell you in the case of a procurement, when a department comes to us for assistance, the operating assumption is that funds are available for the procurement and in the case of exemptions, sole sources and professional services, we do not confirm the source of funds until the recommendation of award is submitted and then we will not award

or proceed with anything further if funds are not confirmed to be available. There is also a protocol where the Director of Finance can approve a solicitation absent funding if there is some assurance that funding is going to be available, but not currently available.

Mr. Bynum: You said that the Office of the Prosecuting Attorney communicates to you some sense of urgency about this?

Mr. Barreira: Yes.

Mr. Bynum: What was the source of that sense of urgency?

Mr. Barreira: We do not get involved in the particulars of the services provided just like how I cannot make an assessment as to whether a bridge is being constructed accurately. The services we rely and defer to the department head, but they felt these were services that were vitally needed by the Court community and community at-large and felt that any delay would bring harm to the services that should be provided.

Mr. Bynum: Thank you.

Chair Furfaro: Ernie, I am going to recognize Mr. Chang next, but I want to make sure that I heard something that I do not agree with.

Mr. Barreira: Yes, sir.

Chair Furfaro: Okay. You approve applications without knowing if funds are available?

Mr. Barreira: Not an application, Sir. We would post on the case of exemptions, sole source and professional services we post advertisements to solicit interested parties at the point where we do not—we would not necessarily at that point have legal confirmation that funds would exist.

Chair Furfaro: At what point do you do that? Do you actually know that funds are available?

Mr. Barreira: We do that before the award for those three specific procurement types and there has been a valid question asked of me if we should seek confirmation of funding even at an earlier stage. I think it is a fair question and something that I am looking at currently.

Chair Furfaro: The Department of Finance gets the minutes from all the action that this Council takes weekly, do you see that?

Mr. Barreira: Yes, I do.

Chair Furfaro: The other question, when we post on the website, we only post when we have identified an item as an exempted item that has no requirement for competitive bid?

Mr. Barreira: No, in this case, Chair, everything is posted, but this was a competitive bid. We exempted a process, but we invited open competition by way of a professional services.

Chair Furfaro: I just wanted to get that clear in my interpretation.
Mr. Chang, you have the floor.

Mr. Chang: Thank you. Ernie, you said something about two years ago you did a vigorous campaign to let people know how to do the bid process? Has that been updated recently for new providers?

Mr. Barreira: It is an excellent point. Actually, to answer your question, no. Have I sent out 1,100 letters again to various providers and vendors in community? No, but we do encourage people in our community meetings, which the Administration routinely provides when we go out to the community centers and speak to people and in my dealings, I am invited often to speak at public events and with the Contractor's Association of Kaua'i, we convey repeatedly that our movement towards electronic procurement and that all of these resources are let on the kauai.gov website, specifically The Division of Purchasing website. So there is routine dialogue and nothing as elaborate that occurred when we first went to a 30-year paper-driven system to a very paperless electronic procurement system.

Mr. Chang: Maybe there should be a refresher course for the new providers in the community. I wanted to ask you, because I have been racking my brains because you have been the procurement officer for a little over two years.

Mr. Barreira: Thank you for the promotion. That is the second time I got promoted today, first the Director of Finance and now the Procurement Officer. I am actually in function for the Division of Purchasing, the Assistant Chief Procurement Officer since April 15, 2010.

Mr. Chang: I am trying to figure out—I cannot recall any other situation as such with this situation here. Can you like off the top of your head think about some similar situation that right now we are getting the application grant part a couple months ago, is there something that pops up in your head with this same sort of situation?

Mr. Barreira: Let me qualify my answer, Sir, by saying that I assumed the role of being in charge administratively over the grant process as part of the budget division only a few months ago. So my experience and exposure is very limited. Someone else in the division—excuse me, in the financial department might be more appropriately able to answer that question. I can only defer to comments that have been made here today that we have seen it happen a number of ways. No argument what is contained within the proviso, whether an application Council has been informed later as opposed to earlier, I cannot answer that.

Mr. Chang: Okay. Thank you.

Chair Furfaro: Mr. Barreira, I would like you to write me how you interpret the proviso that this Council put in there? You have had several meetings with me on my interpretation. I would like you to write us something on how you interpret that. That would be very helpful and also, I want to make sure in your role as the assistant procurement officer, you are really the chief buyer for the County. And I want to make sure, and being the buyer, you are driven by standards, standards. There cannot be these loose, periodic reinterpretations of policy and that is why it is really important to me that I want to know how you

interpret that proviso and determine if we need to have a visit to that. And if you could respond to that, to all the Councilmembers, I would appreciate that.

Mr. Barreira: Very good, sir. I will be away in a week and I will attend to that as soon as I return.

Chair Furfaro: Get it back to us in 8 days.

Mr. Barreira: My only caveat is that my analysis, interpretation, would be based on my professional capacity since I am not licensed to practice law.

Chair Furfaro: Though you did hear me?

Mr. Barreira: Yes.

Chair Furfaro: We will watch for it in 8 days.

Mr. Barreira: Yes.

Chair Furfaro: Vice-Chair Yukimura?

Ms. Yukimura: Yes. Thank you, Ernie. In this notice of request for exemption from H.R.S. 103d, thank you for providing it to me, and if other Councilmembers want it, we can make copies; but it says here \$65,000.00 estimated costs. Funds to be received from the Office of Youth Services, and the grant application before us is for \$35,000.00. So how do you explain that discrepancy?

Mr. Barreira: I would have to defer to the department in terms of what the basis of the application. There was some discussion in our meetings that the funding may have been available from the beginning of fiscal year and we are well into the fiscal year. But once again, Vice-Chair, to be fair, I think the department would have to answer that question.

Ms. Yukimura: This funding is more rather than less than the grant applied for. This is an exemption to process because I guess the consultant they are looking for does not fit within the traditional categories of consultants. I guess these are requests for qualifications...

Mr. Barreira: Yes. It is a very specific program.

Ms. Yukimura: Under this procurement method, you have an evaluation committee to review the qualifications of any contract—potential contractor to provide cultural services, culturally-based restorative justice options for youth, but the people on the committee have no real expertise on restorative justice. They have one attorney who is experienced in contract law and one attorney—two attorneys who have experience in contract law and one attorney with a background in Hawaiian affairs and values, but nobody that really knows the process of social development. The dynamics of recidivism, you know how you bring behavior change to delinquents? How is this committee going to evaluate a culturally-based restorative justice program?

Chair Furfaro: Before you answer that, I am committed to a meeting at 12:30 at another location. I would like to turn the rest of this Council meeting over to you.

Ms. Yukimura: Okay.

Chair Furfaro: Ernie, thank you very much. I look forward to your response.

Mr. Barreira: Thank you, Chair.

Chair Furfaro: I want to remind everyone that Mr. Chang will be absent for the second-half of the meeting going to Honolulu, as well as Council Vice-Chair Yukimura who had a time-specific agenda item.

Mr. Barreira: Chair, excuse me. May I have your permission to submit my responses electronically? I will be away.

Chair Furfaro: If you need two weeks, you have got two weeks.

Mr. Barreira: Very good, Sir. Thank you.

Chair Furfaro: You got it. Got to get current with my sense of humor. Enjoy your time off and you have another week.

Mr. Barreira: It is work, but thank you

Chair Furfaro: We have a commitment of reasonable time so you have two weeks.

Mr. Barreira: Thank you, Chair.

Chair Furfaro: Vice-Chair, you have the floor.

(Chair Furfaro was noted excused at 12:21 p.m.)

Mr. Barreira: Vice-Chair, the content of the review and selection committee pursuant to the rules, one of the provisions in the rules and in the law is that the County officials can bring in an outsider with the developed expertise in an area if they submit an affidavit for approval to the Chief Procurement Officer or the Director of Finance, but we do not dictate those terms at the procurement level. We entrust that evaluative levels to the department heads who feel they are in the best position to make decisions that benefit their department.

Ms. Yukimura: Thank you for that answer. I believe that is all the questions I have. Any other questions from other Councilmembers? If not, thank you, Ernie. Are there any further questions? If not, is there anyone from the public who wishes to testify? Mr. Mickens.

Mr. Mickens: Thank you, JoAnn. For the record, Glenn Mickens. I will make just a short statement. Mel's observation that this type of scrutinizing over the grants being applied for has not been done in the past for me is right on target. Mr. Delaplane has said numerous times that the Prosecuting Attorney has followed all past practices and in applying for these grants, but Councilwoman Yukimura is not satisfied with these answers. As Ken said, where is the consistency when JoAnn asked the question, where is the consistency in scrutinizing all of the grants that the Council is asked to approve. I have never

heard it before and I have sat here for many years. Why are these three grants being examined and why are we spending an unprecedented amount of time, four hours and counting. As Ken stated, it is election time and the term "witch-hunt" seems to be appropriate. I think it is deplorable that we have sat here for four hours going over an issue like this that you folks have rubberstamped in the past. Nobody has ever gone through the time and effort to scrutinize all the grants that have come before you. I have sat before you and heard receive, receive, receive and we did not spend a lot of time on them. As Ken pointed out there are so many more issues that are more important.

Ms. Yukimura: Any questions of Mr. Mickens? I have one, Glenn.

Mr. Mickens: Yes.

Ms. Yukimura: So you think the questions asked were trivial and unnecessary?

Mr. Mickens: Well, again, the word "consistency" fits JoAnn. You did not do it before. Why did it start now?

Ms. Yukimura: Because maybe there are some legitimate questions to ask.

Mr. Mickens: In all of the years you have been bringing this up, you have never had any questions.

Ms. Yukimura: Thank you very much.

Mr. Mickens: Okay, JoAnn, thank you.

Ms. Yukimura: Any other questions or testimony? If not, the meeting will come back to order.

There being no objections, the meeting was called back to order, and proceeded as follows:

Ms. Yukimura: Is there is a motion to approve on the floor? Any discussion? Councilmember Bynum.

Mr. Bynum: The reason this is having so much scrutiny is because past practices are breaking down. We can go and we have gone into the technical aspect how was this noticed? How did they get an opportunity? We got clear answers that because of the source of this funding it requires an Advisory Committee, which has operated for many years on Kaua'i. What would have happened in the past is this advisory committee would have known about the funds and would have had input on the make-up of the grant application that went over. The questions that we had today about whether there are duplicative services with Teen Court and how this program impacts Teen Court would have been vetted in that Advisory Committee. The bigger picture to me is about a breakdown in a collaborative process about serving our community. Miss Bishop is here from Hale 'Ōpio, who is an extremely knowledgeable person on these issues and has been involved from her own testimony from a number of different Prosecutors and a number of different administrations and we should all be concerned that Hale 'Ōpio was not aware and you could be technical and say it was posted on the website and

they should know to go there, but there is a breakdown of that collaboration. We have a grant that we are being asked to give permission to apply for, that has already been applied. We all know what is that provision's expectation and why it is there, so we can understand how this works with all of the other services that are provided. There is a reason why there is this level of scrutiny, because there has been a change in our standards of practice. The provision to come here and discuss these issues prior to application I know is clear to all Councilmembers, and has been an expectation I have understood for a very long time. I am at a loss what to do with this and I may have to ask Ernie another question, because I think we should do this process in that collaborative fashion. I think we still—unanswered to me is a requirement for portion of the funding to go through an advisory committee which has not happened yet. We are deep into procurement. I did not ask Ernie, because he cannot tell us who responded, but they have already selected somebody to do this, when our premiere non-profits were not even aware of that and never applied for or put an application in because they were not aware. I would like to start this over again. Start it and vet all of those questions through the normal processes and be respectful of the professionals in our community who have given of themselves for so many years to provide these serious in a thoughtful and systematic way and give them an opportunity to apply. That is my statement.

Ms. Yukimura: Thank you. Is there any other comments?
Councilmember Chang?

Mr. Chang: So Councilmember Bynum, are you after discussion would you be requesting a deferral? Is that what you are saying?

Mr. Bynum: This is a unique circumstance. I am very concerned that the vetting—the normal vetting in this community about what is the appropriate way to expend these funds has not occurred. I think I am likely to vote against this approval today. I think and I am not sure what the implications would be, but I think it would mean you have to start over in the process in a systematic function.

Ms. Yukimura: As the presiding officer I want to say this proposal is not ready for approval in my mind. It has missed many steps and so I will not be voting against it and at minimal a deferral is appropriate. I want to give people a chance to speak. I think Councilmember Chang had the floor.

Mr. Chang: I am fine, I just wanted to ask Mr. Bynum.

Ms. Yukimura: Councilmember Rapozo?

Mr. Rapozo: Thank you. Well, I am hoping we can pass this out today. We approve a lot of grants. Last week we did over half a million dollar grant in the Department of Transportation. No questions. There is a level of expectation, level of trust for the department to manage a grant properly. Again, like I said earlier, I have never seen this much scrutiny on any grant, much less a \$35,000.00 grant to give our kids an option. This is another opportunity for kids that right now would not be allowed an opportunity to have a diversion program. It would basically force them into the system. The argument about whether or not the application was submitted before Council approval, I believe that the language in The Charter—in the budget, unless we change it, and add "before submittal," were perfectly in compliance. We as politicians, we hit the campaign trail and always talk about the kids, the kids, the kids. This is an opportunity right now and we had

time to examine this program. We had time to discuss the benefits. I do not see this as a competition for Teen Court. I think Teen Court is a fabulous program. We get great results for that, but there are kids that fall through the cracks and they cannot get on that track. So this provides that opportunity. I would find it hard to believe that the Advisory Council would not support this and if they do, they do. It is something at that point where you basically tell the State to keep your money. I can remember Chair Asing, when he was the Chair, and department heads would come up and were able to find some grant funds to run operations in their office, he would compliment them. In this case you guys were scrutinized for such a small grant request and you cannot see why. I thank you for seeking out—utilizing State funds to help our kids. That is what this does. This helps our keiki in a program that is currently not available to them. Teen Court is still going to be there. They are still going to get referrals. Let me say, Jake, I know you were hesitant to answer, but I did read the press release or the communication and the reason that the referrals stopped was because of a County Attorney's opinion. That is why it was stopped. The diversionary programs, until matters were resolved, were to be stopped. That is neither here, nor there. The question on the table is what are we going to do with this grant? Defer it again? I will not support a deferral. I do not know how many votes we need to pass this today with a recusal and an absence. I am not sure we need three votes. Three of us and we can get this program moving. Three. We need three votes to pass. We are probably going to get into another three-hour debate about that. I am saying we need three votes but JoAnn is the Chair, she can ask for four. It is obvious the direction this Council pre-determined and it was clear to me that it was doomed to fail from the beginning. I am here to say as far as again the application timing is irrelevant to me. You are in compliance. We are here for the approval today and it is in line with budget. Everything that—the questions that were asked today, 85-90% of them was in the submittal in the literature that you submitted, but we re-asked you and wanted to hear it out of your mouths and you did answer. I read this literature. I read it—I am very comfortable. Now if you do not do what you say you are going to do, next year I vote no, if I am here. But that is how it works. I cannot remember a time we have not voted in support of a grant for free money. I do not remember it and I am sure it happened at some point, but as far as my recollection sitting on the Council for eight years, I cannot recall a time that this Council said no to Federal/State money and I am not going to start today. This is a program that I think is an asset to our kids. You know the kids that we talk about helping every time we are on the streets. This is an opportunity for us to help them. I am going to support it. I am encouraging two others to do the same. Somebody wants to make a motion to defer, that is fine. I will not support a deferral. I made the motion to approve because I think that is a worthwhile program and will touch a lot of kids that we can help today, not years from now. I expect the Prosecutor's Office to keep records and I expect the Prosecutor's Office to maintain accurate statistics and make sure these programs moves forward. That is something that will be addressed at a future date, but for today, I am begging two other Councilmembers to support this application as we have done for so many others. Thank you.

Ms. Yukimura:

Councilmember Chang?

Mr. Chang:

Thank you. I seconded the motion to approve for discussion purposes and I think it was a great discussion, a healthy discussion. But during that discussion, if the Procurement Officer can tell me he does not recall a conversation and the County Attorney comes up in front of us and says he had no discussion, or in that tone, that gives me some concern and I do not believe any way, shape or form that this discussion was doomed from the get-go. We all want to

support the children. We all want to support Teen Court and all want to support the youth P.O.H.A.K.U. program and I like the component that we are using Hawaiian values. Definitely. As Mr. Delaplane was saying, it is unfair to see how this program is going to work because there is nothing like Hawaiian values on the face of the planet. I am totally in what is ho'oponopono, what is right and giving people second chances in learning the Hawaiian ways and values of this land. I think it can be extremely educational for our youth because we are all Hawaiians here and it is a different situation being on an island. This is a small island and we are talking about downtown Līhu'e or downtown Kapa'a or downtown Kekaha. We are not talking about Chicago and Atlanta and L.A., we are talking about some bad places in this world, but I am really having a hard time based on the fact there were so many questions that we asked earlier about can we get a response back from that? Can we get a response back from that? I want to make it perfectly clear we all support the youth. When Miss Bishop tells us nationally there are children that are in trouble ten times before they even get their first consultation or they meet their police officers, that is way too many times. Twice, once, we get a second chance, twice, it is a red-flag. I think there are many more questions out there and I came here with an open mind. I am having a problem recalling the time or anytime that we got a situation that such has arisen that we are asking for approval at this point. I think I have additional questions, but I want to make it perfectly clear, I never had any decision based on showing up. I wanted to hear testimonies and I do have concerns and I believe in the program and I think we all believe in the youth. We do not want problems and we do not want repeat offenders. The best we can implement this program that is what I am for. I just have a few questions and concerns at that time. So that would be my statement.

Ms. Yukimura: The Chair wants to say that—one of the options for us is after we have full discussion here, to defer the matter until we get the responses to those other questions. We could even say until we get the advisory group to discuss the matter and report back to us. Actually, understanding the process of Federal grants, especially with respect to drug prevention, I believe there is a Federal intent that any program—any Federal moneys spent are really supported by the community and especially by those involved in the problem that is being addressed. It is a problem of restorative justice, but rejecting this particular program does not mean that we refuse the moneys necessarily. It is allocated, part of it is a County formula that is meant for Kaua'i County. It could be used for K.P.A.L. It can be used for the office of Life Choices. It can be used for Teen Court. It could be used for another kind of program that addresses those early ten times that kids are interfaced with the justice system before they are first arrested. So there are many other options and if the Advisory Committee works well, that is the committee that could look at all of those options and make recommendations to the County. So it is not about no moneys or no programs or no diversion program. It is really about, "What is the best use of the money?" and "How we can really serve our keiki well?" I also want to say that the whole issue about County Attorney's opinion and therefore, diversion programs should all stop is a terribly flimsy, uninformed position because the Teen Court has an M.O.U. with the County Attorney's Office. The problem with the former P.O.H.A.K.U. project is there was no formal procurement and no contractual agreement with Strategic Justice Partners. So to hold up the diversion, which is to the Teen Court, which is hurting our keiki is crazy. Any have further discussion?

Ms. Nakamura: Did we have any sense of time sensitivity, because this has already been submitted and I am assuming that we are waiting to hear back from the State?

Ms. Yukimura: It has not been submitted. It is in a draft. So it has not formally been submitted.

Ms. Nakamura: Can we ask the Prosecuting Attorney?

There being no objections, the rules were suspended.

Mr. Delaplane: Jake Delaplane, First Deputy Prosecuting Attorney.

Ms. Nakamura: Is there any time sensitivity?

Mr. Delaplane: There is and the reason there is a time sensitivity issue, and I am glad Councilmember Yukimura brought up the difference in funding. Originally we had hoped that we were going to be getting \$65,000.00 to implement this program for the full-year. Through the course of the last several months there have been hold ups and just continual roadblocks on us going forward with this process. Now we have gotten into August, probably going to get a little bit later before we are all the way through the procurement issues and all of that to implement the program. That is why the funding level went down from \$65,000.00 to \$35,000.00. The longer that we wait to apply for these funds and get the process approved, the less money is going to be available from the Office of Youth Services. As every week goes by, there is less and less money available to our office and to implement this program. The further we put this out, the less that is going to be available. If we continue on into the fiscal year, it is just going to dry up and there will be no money available and that was communicated to us from David Hipp, Executive Director of O.Y.S. that you have to get in and apply for the grant funds otherwise they just dry up and disappear and we will have to put them somewhere else to be used somewhere else throughout the State. Again, that is where the time sensitivity issue was. That was communicated to Ernie Barreira the whole time during that process, again, which is why absolutely the funding source is part of the discussions that we had with Ernie, because there was this time issue of getting in this application for grant funding.

Ms. Yukimura: So exactly what is the deadline?

Mr. Delaplane: There is no deadline. As we move further through the year, less money will be available. David Hipp has not given us an absolute deadline, but he has notified us that the entire amount that we discussed before, the \$65,000.00, is not available and at most it could be \$35,000.00. Over a period of three months, or basically the funding availability dropped by \$10,000.00 per month.

Ms. Yukimura: There was no delay on this Council. The first application was the last week and we have accelerated. We scheduled a special meeting.

Mr. Delaplane: Right.

Ms. Yukimura: So I do not know what you are talking about in terms of roadblocks.

Mr. Delaplane: Procurement delays and delays caused by the County Attorney's Office.

Ms. Yukimura: There is no procurement unless there is approval.

Mr. Delaplane: Again, you heard Ernie come up and talk about the process that he has been through with us. We have been in constant communication with him. It has not even been until now that anyone addressed this issue that there could be a problem. And again, I think under the code, there is absolutely no prohibition for us taking a parallel course, applying and asking you folks.

Ms. Yukimura: Thank you, Jake.

Mr. Delaplane: Well, I guess you could interrupt me again.

Ms. Yukimura: Yes because the question was about the deadline. Thank you. If you could vacate that seat, I would like to have...any more questions for Jake?

Mr. Chang: Thank you, Jake. I am sorry. If we could have done this in another way, or if we could have done this months ago, what would you change? How could we have done this process better?

Ms. Yukimura: We have to take a lunch break and come back after lunch, because we do not have time. We are already past our time.

Mr. Chang: Let me ask one more question because I have to leave.

Ms. Yukimura: That is right. You have to go.

Mr. Chang: So unfortunately whatever happens, do we have other funding sources within the Prosecuting Attorney's Office we may be able to pull since it is such a sense of urgency or do we have no—is it purely going to be based on this funding?

Mr. Delaplane: The Keiki P.O.H.A.K.U. Program depends on this funding. If we do not get this funding we are not going to be able to implement the Keiki P.O.H.A.K.U Program any time soon. We will have to figure out later down the road some funding source. It was our hope and intention to help the kids who have fallen through the gap now, but if we cannot get this through, we will move on to another day. It was our hope to get it through.

Ms. Yukimura: Thank you. Councilmember Bynum has a question for the County Attorney. Go ahead.

Mr. Castillo: County Attorney, Al Castillo.

Mr. Bynum: We heard it stated that there were no referrals to diversion programs since April and we heard it stated by a couple of people; that was because you instructed not to make referrals. Can you address that please?

Mr. Castillo: Thank you for the opportunity. Basically blaming another department for the delays, I would say using the County Attorney's Office as a scapegoat is...

Ms. Yukimura: Can you give us a yes or no?

Mr. Castillo: No, we did not block anything.

Mr. Bynum: You never told them to stop doing referrals?

Mr. Castillo: We never told people—all we—what we do is to make sure that all of the departments do things correctly and follow the law.

Ms. Yukimura: Thank you.

Mr. Rapozo: I have a question.

Ms. Yukimura: Yes, go ahead.

Mr. Rapozo: Al, you saw the Jennifer Winn opinion? The one that went to the Prosecuting Attorney's Office?

Mr. Castillo: That opinion had nothing to do—first of all, it had nothing to do with the diversionary program, nothing to do with stopping Teen Court, and nothing to do with the procurement process for the Keiki P.O.H.A.K.U. So to extrapolate an opinion that gives them proper guidance regarding the regular P.O.H.A.K.U. and to extend that and say we are going to stop everything else...

Mr. Rapozo: Let me just say first of all I never said that. I never said that Al said. I never said that Al made that order, but I did have a chance to read the opinion from Jennifer Winn and to me it was quite clear until the matters are resolved all diversionary programs will be ceased. I do not know if you read it or I do not know if you wrote it.

The meeting was called back to order, and proceeded as follows:

Mr. Bynum: Point of order, is that opinion released to the public?

Mr. Rapozo: No, but you can ask the Prosecuting Attorney's Office to see if you want.

Mr. Bynum: I do not think it should be discussed on the floor if it has not been released.

Ms. Yukimura: The point of order is accepted.

Mr. Rapozo: Right. I apologize for that. Anyways, I do not think Jake has a problem with that opinion being released, but I misspoke and I apologize for that. I never said Mr. Castillo stopped the process. I said the County Attorney's Office stopped the program. Thank you.

Ms. Yukimura: So we are going to recess and come back for a vote.

Mr. Rapozo: Chair, if you guys are going to defer it, just do it now. There is no sense in taking a lunch break, you have the votes, so we do not have to come back and rehash the item.

Ms. Yukimura: Is there a motion to defer? Chair entertains a motion to defer.

Ms. Nakamura moved to defer C 2012-335.

Ms. Yukimura: Is there a second? Okay. Move to defer fails for lack of a second and I am not going to go into the main motion right now because we do not have time for the discussion.

Mr. Rapozo: You are going to have more discussion?
Ms. Yukimura: Yes.

Mr. Rapozo: I will call for the question.

Ms. Yukimura: Well, if you want to make a motion to close debate, you may and it needs a second.

Mr. Rapozo moved to close the debate.

Ms. Yukimura: Is there a second? If not, we are in recess.

There being no objections, the meeting recessed at 12:50 p.m.

The meeting reconvened at 1:56 p.m., and proceeded as follows:

Mr. Chang was noted as excused.

Chair Furfaro: Okay, we are back from lunch break. We are still in the Special Council Meeting. I want to thank members for understanding I needed a fixed appointment to go to, but as we come back here, I would like to ask that we move for a deferral for 30 days, at least, so that we have time to get some information from Mr. Hipp, as well as allow the Prosecutor's Office to meet with the Advisory Committee at minimum. So I am looking for a motion to defer.

Ms. Yukimura: Mr. Chair.

Chair Furfaro: Yes.

Ms. Yukimura: Two things. First, one, a personal privilege, Councilmember Chang just wanted me to explain that he had an urgent family matter, which is why he is not here this afternoon. Then secondly, I did want to say a few words about this discussion. I promise you, I will do it in two minutes.

Chair Furfaro: Now that is a promise?

Ms. Yukimura: That is promise. You can start the timer, if I may speak?

Chair Furfaro: You may speak. You know what I am looking for. I am looking for a deferral.

Ms. Yukimura: I would be happy to make that motion to defer.

Chair Furfaro: So start the timer.

Ms. Yukimura: I just want to say that people have wondered why we are asking all of these questions. I think it is because trust has been broken. It is because of past performance where there was not proper procurement procedures followed and there were not proper contracts developed, and that brings liabilities to the County. We have a right to ask these questions, and I believe that there are things in this particular item that have not been done in a good sequence that will give us confidence this will be a good program at the end. I think nobody disagrees with the purpose of this diversion program and we fully support that. But the devil is in the details and how the program is to be provided and how it will be tracked and evaluated are all issues that are very relevant to County Council questions. I am willing to defer this matter to allow the Prosecuting Attorney's Office to do their due diligence and work and because the program will not help kids in the ways we want it to unless it is well-structured and well-developed.

Mr. Rapozo: Mr. Chair.

Chair Furfaro: Mr. Rapozo.

Mr. Rapozo: Thank you. I think we heard from Mr. Delaplane that in three months we lost \$10,000.00 a month and I do not want to see us lose another minimum of \$10,000 in the grant. I will not be deferring the item. I know Councilmember Yukimura may have trust issues and it is depending on whose opinion you agree with. I think the most recent opinion by Mr. Slovin was clear in that nothing was a problem with the procurement of another program. I do not have a trust issue and I have a very high expectation of your office involving the program and I expect the department to maintain the proper statistics and numbers. I will not be supporting the deferral at this time, simply because I think time is of the essence and I think the literature you submitted and the description of your program you intend to implement would be in the best interest of our kids. I will not be supporting the deferral. Thank you.

Mr. Bynum: I was ready to vote on a deferral, but I think it is important to point out that Mr. Slovin's opinion is the opinion of attorney. It was not an independent opinion. It was the opinion of the attorney that was hired to represent the Office of the Prosecuting Attorney.

Chair Furfaro: What Mr. Bynum just said needed to be said because Mr. Slovin is your attorney and he was hired...Come up to the mic, Jake.

There being no objections, the rules were suspended.

Mr. Delaplane: Jake Delaplane.

Chair Furfaro: Let me pose you some questions, Mr. Delaplane. Did this Council approve money for legal services for your office?

Mr. Delaplane: It did.

Chair Furfaro: Thank you. Did Mr. Slovin—was he selected originally to be your counsel?

Mr. Delaplane: Not by our office and not to represent our office.

Chair Furfaro: Okay. Wait a minute. I am asking you the questions. And your office is not solely responsible for the selection of the attorney by Charter. Let us make sure we are following all of the rules. Those selection processes are made by the County Attorney. They are not made by the department that got the approval. And I do also want to say that Mr. Slovin gave an opinion, which is his opinion as a special counsel that was hired. He did not give an opinion that reflected the judgment of the Courts. If you want to write anything more to the three things that I just said, you are more than welcome.

Mr. Delaplane: I will and I will make that public as well and if I may respond briefly.

Chair Furfaro: You can make it as public as you want and you will not be able to respond to what I just stated. I wanted to clear the record, Mr. Slovin was hired with special counsel moneys provided by this Council for the purpose of defending your office.

Mr. Delaplane: That is incorrect and I will be submitting the correct characterization of that in writing.

Chair Furfaro: I know what I voted for and what I voted for was special counsel for your office.

Mr. Delaplane: What you voted for and what actually happened are two very different things.

Chair Furfaro: Then you speak to that in your response to me. But I am telling you if you check the County records, what I voted for was for defense and legal counsel for your office. If it was different than that, you may write me. I will take it up personally with the County Attorney.

Mr. Delaplane: Defense was nowhere in there and if you look at the agenda item, that word "defense" that you used did not appear. Mr. Slovin acted as the County Attorney because the County Attorney had a conflict in that matter so his opinion is just as if the County Attorney himself wrote an opinion.

Chair Furfaro: That is your opinion. I want to make sure that I know the conditions. He was to give you counsel for the P.O.H.A.K.U. Program only on civil matters, not criminal. That was never a question here. Let us leave it at that and if you want to write me about what I voted for, I suggest you write it to the County Clerk because I know what I voted for.

Mr. Delaplane: I will. Thank you.

The meeting was called back to order, and proceeded as follows:

Chair Furfaro: I am looking for a motion that takes this to September 26.

Ms. Yukimura: So moved to defer until...

Chair Furfaro: I was not finished speaking. I gave everybody an opportunity to speak and I responded to somebody in the audience that was shaking his head as to what I voted for. So for the purpose of the special counsel, I hope I have answered that question and we understand that you will be writing to the Clerk because that is what I voted for. As far as the advisory committee, I would hope in this time you can consult with the advisory committee that exists. I will be sending over some additional questions and I will make an attempt to go to Honolulu to visit with Mr. Hipp. And on that note, I want to also correct a statement that was made that reflects on trust again. I want to make sure we all understand, what the body here is responsible for is we are responsible for procedures, standards, and process. That is what we had discussion about today. We did not have any discussion about trust and issues that dealt with—that—if there is an inconsistency in the standards about procurement, process or financial reviews, that is what the discussion was about today. Now I will entertain a motion to defer.

Ms. Yukimura moved to defer C 2012-336 until the September 26 Council Meeting, seconded by Ms. Nakamura, and carried by a vote of 4:1:1:1 (Mr. Rapozo voting no, Mr. Chang excused, and Mr. Kualii recused.)

Chair Furfaro: Next item, I want to finish—we have one "no" recorded. I want to finish the Special Council meeting for today and again, I apologize. I made an appointment and did not realize that the special meeting from this morning would have gone four and a half hours.

C-2012-337 Communication (07/25/2012) from the Prosecuting Attorney, requesting Council approval to apply, receive and expend State of Hawai'i funds in the amount of \$70,920.00 for the Victim Witness Program, which will be utilized to fund a temporary Victim Witness Counselor I position (\$43,296.00), temporary set of Professional Equipment (\$5,260.00), Fringe Benefits (\$16,364.00), Operational Supplies (\$5,000.00) and Travel Expenses (\$1,000.00) Fiscal Year 2013 to fulfill important aspects of the Justice Reinvestment Initiative.

Mr. Bynum moved to approve C 2012-337, seconded by Ms. Yukimura.

Chair Furfaro: Mr. Bynum.

Mr. Bynum: I just want to say that is this is an initiative of the State Legislature and the State and our Prosecutors appropriately responding to an initiative of State Government grant and aid and I am in favor of approving this.

Chair Furfaro: Any further discussion?

Mr. Rapozo: Mr. Chair, I have a question for the Prosecutor's Office?

Chair Furfaro: Sure. We will suspend the rules. Prosecutor's Office, if you can come up.

There being no objections, the rules were suspended.

Mr. Delaplane: Jake Delaplane, First Deputy Prosecuting Attorney.

Lea Young, Clerk: Lea Young, Law Clerk.

Mr. Rapozo: Can you give us an overview of the Justice Reinvestment act—I am sorry, is that what it is called the Justice Reinvestment Initiative?

Mr. Delaplane: Lea has done the research for this office and I will let her give you a summary.

Ms. Young: I believe you have Senate Bill 2776, Senate Draft 2, House Draft 2, Conference Draft 1 within your packet and that Senate Bill basically establishes a structure to improve our criminal justice system and it changes a lot of existing services that apply, but they are expanding victim services because they plan to bring back about 1,400 prisoners from the mainland back to Hawai'i. So they need to strengthen the victim services for when that happens. Other aspects include probation, pre-trial risk assessment, things like that. But basically I think Hawai'i is the only State that has included in their DARE package huge portion for victim services and about 13 positions, and funds have gone into this initiative to strengthen victim services for this initiative.

Mr. Rapozo: You said 1,400, but I thought I read somewhere 1,100, but 1,400 prisoners will be released?

Ms. Young: They will be brought back to Hawai'i.

Mr. Rapozo: To be incarcerated or set on probation?

Mr. Delaplane: That is still unclear. I know that they are not going to be expanding the bed space at Hālawā Correctional Facility, and across all the neighboring islands, none of the correctional facilities have any current plans to expand bed space. You have to read between the lines, basically. They are bringing back 1,400 prisoners, so where is that bed space going to come from? The only place you can get that bed space from is by releasing people who are currently incarcerated. I think what they are thinking behind the bill and they are actually correct, I am sure, that there are going to be in the future additional victim services that are needed to address this mass release of prisoners from our correctional facilities in Hālawā.

Mr. Rapozo: They get released from Arizona or from the mainland, wherever they are at. I understand that Arizona is one of those, I know because that is where my cousin was. So they get back and they have to fit in this existing bed space and at that point reassessments will be done to see who gets released?

Mr. Delaplane: Yes.

Mr. Rapozo: Your office now will have to be tasked with providing the victim services for these defendants or inmates that will be released from prison?

Mr. Delaplane: Right. So it includes things—I am not actually sure how it is going to affect your workload, because it appears that the main thing that is going to be needed is victim notification of the release of the prisoners, but that is already done by an automated system funded by the State which is SAVN. Again, there may be some services that are needed, but it is still unclear, because the initiative has not gone through yet what we are actually going to need.

Mr. Rapozo: At this point, the funds get appropriated you really have no use for this position at this point?

Mr. Delaplane: No.

Mr. Rapozo: Until they start releasing prisoners.

Mr. Delaplane: Until we see how the release actually affects operations—I cannot sit here and say currently we have a need for this position as far as State funding goes.

Mr. Rapozo: As I was reading the Bill, it was pretty much mandated by the State. They say, “Here are some issues, here is some money for you folks, and go hire a person.” Until we release prisoners in your area, what does that person do? Because I would assume that with this grant, they would be required by the parameters of the grant. You cannot use this person for anything other than the Justice Reinvestment Initiative.

Mr. Delaplane: Yes. That is what the grant money is intended for.

Mr. Rapozo: What does this person do? Wait for the State to call and say, “John Doe is being released.”

Mr. Delaplane: We do not know yet. It is something that was mandated by the State and we are here under the direction of the Finance Department to ask for this money.

Mr. Rapozo: This is the scary part and I think the public needs to know this. This is the amended language of the bill. It is a State bill. It is not a local bill. It is not a County bill, but it says, “If the paroled prisoner is retaken and reimprisoned”...if, which means he may not and he may or she may get released and at that point, I guess, your office and that is for what? One counselor?

Mr. Delaplane: Yes.

Mr. Rapozo: I am assuming this counselor will be responsible for victim notification?

Ms. Young: And following up on restitution limits.

Mr. Rapozo: Restitution?

Mr. Delaplane: Yes.

Mr. Rapozo: Is this something that we can say no to?

Mr. Delaplane: I assume so.

There being no objections, the meeting recessed at 2:14 p.m.

The meeting reconvened at 2:17 p.m., and proceeded as follows:

Chair Furfaro: We are back from a tape change. I am trying to move along here, Jake. So let me share some information with you. This Act that became or bill from Senate 2776 is available here at Council for you. I want to make sure also that you understand that there is an accompanying bill, which is attached to the State Budget Bill, 2012 and if that bill, of which we have a copy, the \$70,300.00 is made available to Kaua'i County. We also have the worksheet attached to it which only identifies one position. Based on some of the work that we have just talked about and in the hotel business we call that being "overbooked." You get 1,400 potential releases through consultation, tracking through the State and I think they anticipated a net change of about 1,100. I do not think the money that is in this bill is significant enough for your department. I am going to say that right up front. I do not think it is enough for your department. I do not know how much of that estimated load is Kaua'i-destined, but certainly it is work pursuing. I will give your office the worksheet that we got as well, attached to the Budget Bill 2012 and I would certainly entertain some comment in a future meeting from you about the scope of that work. About the scope of that work and make sure that we are talking about the fact of the matter is until we know—until we know those specific numbers, I am not sure that is enough money for you from the State. We need to work jointly if there is an additional need, because this contacting victims, there are consultations with the selected few that do have shorter sentences. We need to stay in close contact.

Mr. Delaplane: Just to follow-up on that, I do sit on the Justice Reinvestment Act Working Group Committee and again, there has been some discussion and you know, again, I do not know that our office will necessarily need additional resources in terms of victim services, as the real problem behind this Justice Reinvestment Initiative is releasing massive amounts of criminals back into our society that will re-offend. So there might be some enforcement issues as well.

Chair Fufaro: I want to say to you that this is a State bill. It was processed through the Senate, through the Governor, okay? I just want to let you know that the door is open if you need the value of kōkua to make sure that you are staffed appropriately. First blush and I am only saying first blush I do not think this is enough money from what they are expecting from the Office of the Prosecuting Attorney. On that note, if would like to see if we can move on. Mr. Rapozo.

Mr. Rapozo: If I could continue with questions.

Chair Furfaro: If I interrupted you, I am sorry.

Mr. Rapozo: No, you are the Chair, Sir.

Chair Furfaro: I am the Chair, but we took a tape change and I love my place.

Mr. Rapozoz: Not a problem.

Chair Furfaro: I will get the staff to get you copies of both.

Mr. Rapozo: I believe the worksheet and budget sheet is what was submitted with...

Mr. Delaplane: It is.

Mr. Rapozo: I am thinking it is the same one. Mr. Chair, is that what it looks like?

Chair Furfaro: That is what it looks like.

Mr. Rapozo: Okay. This actually came from the Prosecuting Attorney's Office. I did see that.

Mr. Delaplane: Yes.

Mr. Rapozo: The question is and obviously I am not going to stand in the way of State money. We get unfunded mandates all the time. This is a funded mandate, which is pretty cool—rare. Would we be allowed or can you check to see if we would be allowed to utilize this position for existing parolees, existing restitutional requirements, and existing victim communications? I think the restitution issue is one and I am not sure—the way I read your communication really it will be limited to the Justice Reinvestment Initiative, which means potential 1,400 people that are supposedly slated to be released or transferred back home. It is possible to check, it will take a burden off of your office.

Mr. Delaplane: It is my understanding that this money is to be used for services related to the Justice Reinvestment Act. So again, like any other grant you are limited in scope and purpose as to what you can utilize the grant moneys for.

Mr. Rapozo: Okay. It does not hurt to ask though.

Mr. Delaplane: Yes.

Chair Furfaro: Mr. Bynum.

Mr. Bynum: This is a Federal initiative that the State has adopted, correct?

Mr. Delaplane: Yes.

Mr. Bynum: And other States are a year or two ahead of us?

Mr. Delaplane: Their implementation is a little bit different than what we are doing here in Hawai'i.

Mr. Bynum: I understand that, but this bill is primarily about prisoner overcrowding, right?

Mr. Delaplane: I do not know that I would say it is primarily about overcrowding, I think it is—most of what it has to do with is bringing our prisoners back from the mainland who are housed in basically foreign prisons. So they are in Arizona, Arkansas, and places like that.

Mr. Bynum: I have been reading about this for a couple of years and you know, it is about alternatives to incarceration and the first phase is a lot of data-intensive work I believe and will put a burden on your office to administer this. I wonder why they called it a Victim Witness Counselor, because it has certainly a victim aspect to it, but it is not primarily, but that was the State's title. The State's funding, but I do believe there is plenty of work to do right away, but more on the administrative side as opposed to victim services.

Mr. Delaplane: I would agree with that completely.

Mr. Bynum: Thank you.

Chair Furfaro: Councilwoman Nakamura.

Ms. Nakamura: Were there funds as well for integration services?

Mr. Delaplane: No, the only funding that was allocated was for the Victim Witness Services and again, that was the State decided that and so we had no real say in that.

Ms. Nakamura: It is incredible that probably the most important phase of integrating former prisoners back into society that they jumped immediately to the conclusion that they would re-commit crimes rather than try to fix the issue first?

Mr. Deplane: Right.

Chair Furfaro: Well, it is been an amazing morning. What can I say? Anymore? Thank you very much and before you leave, if you disagree with my comments on the independent decision that you received or any challenge to what we voted on here, you direct it to the County Clerk because our records will reflect what I said. Anyone in the audience to testify to this bill? Seeing no one, I will call this meeting back to order.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Members, I want to make sure you understand my comment. I feel it is a burden that we might inherit and the Prosecutor's Office may need assistance financially, depending on how they measure the burden. On that note, Jake, and to your grant writers, again I want to make sure that you understand, that if this becomes an item, if it is a burden larger than what we can do for you staffing-wise, please feel free to come and talk to us about it, okay? On that note, if there is no more further discussion, I would like to vote to approve on this and I would like to end the Special Council Meeting that started at 8:30 this morning. There is a motion and a second. Can have I a roll call vote on this please.

The motion for approval of C 2012-337 was then put, and carried by the following vote:


FOR: Bynum, Nakamura, Rapozo, Yukimura, Furfaro
AGAINST: None.
EXCUSED & NOT VOTING: Chang
RECUSED & NOT VOTING: Kualii

TOTAL-5
TOTAL-0
TOTAL-1
TOTAL-1.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 2:26 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ricky Watanabe", written over a horizontal line.

RICKY WATANABE
County Clerk

/il/cy

